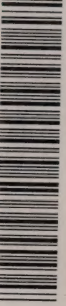


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Government  
Publications

Gov.Doc. Canada. Secretary of State,  
Can Dept.of the  
S Correspondence between the  
Government of the Dominion  
and the Imperial Government,  
on the subject of the fisheries

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# (RETURN)

Correspondence between the Government of the Dominion and the Imperial Government on the subject of the Fisheries, with other documents relating to the same, laid before the Honorable the House of Commons.

By command.

J. C. AIKENS,

Secretary of State.

DEPARTMENT OF THE SECRETARY OF STATE,

20th February, 1871.

## *Minute of Canadian Government.*

The Committee of Council have given their best consideration to the despatch from the Secretary of State for the Colonies, dated 3rd March, on the subject of the course to be adopted on the termination of the right of American citizens to use the inshore fishing of the British North American Provinces.

The Committee desire to assure Her Majesty's Government of their earnest wish to avoid any step that would be likely to produce collision with the American fishermen, and consequent difficulty with the United States. They have no disposition to use the apprehension of national differences arising out of the fisheries, as a means of influencing the United States to replace their trade relations with British North America on a satisfactory footing. They believe that the advantages of a free interchange of the productions of the two countries, will, ere long become so apparent, as to induce the United States to modify or recede from their present policy. But even if this be not the case, they prefer submitting to all the inconveniences of the present interruption of trade, rather than to seek its restoration by the adoption of a policy which might involve the risks and sacrifices attendant upon war. Her Majesty's Government may therefore feel assured that, so far as Canada is (and it is confidently affirmed the other Provinces are) concerned, the question of the fisheries will be dealt with in a spirit of conciliation and liberality, so far as the maintenance of national rights will permit.

The intrinsic value of the Fisheries is not very generally known in England, nor the important influence their possession must hereafter exercise on the destinies of British North America. The take of fish by Provincial fishermen, irrespective of Newfoundland, now amounts annually in value to from \$4,000,000 to \$5,000,000, employing upwards of 20,000 men and boys, and providing a nursery for hardy seamen, which will in the future make British North America the predominant Maritime Power on this Continent. This trade, even subject to the competition of American fishermen, has had a very rapid growth, and now forms the staple of the export of Nova Scotia and Newfoundland. In Prince Edward Island, New Brunswick, and Nova Scotia, the market for the coarse grains, potatoes and dairy produce (forming the bulk of their agricultural production) has been in



the United States; and being now in a great measure closed, it is evident that a change of industry must to a certain extent take place. This opportunity is offered in the inexhaustible fisheries on their shores; and it is evident that any additional value which may attach to the catch of fish will tend to stimulate this industry, and to reconcile the people to the losses which will necessarily attend a change of production.

The United States do not possess on their coast any fisheries of much value, and though they still hold in common with other nations the right of deep sea fishing, still the mackerel and herring fishing is now almost wholly within the three mile coast limit, and the catch of bait is entirely inshore. The exclusion of American fishermen from the inshore fishing, will, therefore, give the Provinces the entire control of the mackerel and herring fisheries, and a great advantage in the cod fishing—and it cannot be long before the former fishermen will prove unable to compete with the latter, even with the high duties levied by the United States on fish. It is also to be observed that a very large trade in fish now exists between the United States and the foreign West Indies, which a very slight increase on the cost of American caught fish must transfer to the British Provinces.

The Committee have only thus far treated the question as affecting the Maritime Provinces; but it is proper to remark that the most valuable fisheries are in the waters of Canada, and form the principal means of livelihood to the bulk of the population on the St. Lawrence and the Bay of Chaleurs below Quebec. Canada desires to preserve these fisheries not only for her own people, but in the interests of the Maritime Colonies, with whom she hopes speedily to be united, and their preservation and development must in the future be an object of the highest interest to the Confederation as a source of national strength and defence, the more essential from the extended line of sea coast which will have to be protected.

The action of the United States having forced upon the Provinces the search for other markets, the control of the supply of fish becomes of immense importance, and if wisely used, this staple of commerce will greatly tend to open new channels of trade, by enabling our merchants to make up assorted cargoes cheaper than can be done by American traders to the same foreign countries.

It has been much questioned whether the concession of inshore fishing to the United States was not, in a national point of view, a mistake; and even from its material aspect, much more than an equivalent for any favors given to the Provinces by the Reciprocity Treaty. But the very proper anxiety to avoid national complications, has always furnished sufficient reasons for acquiescence in the settlement then made of the question; and from the same cause, the Canadian Government now desire to treat the subject with the utmost discretion.

Upon a failure of the negotiations for a continuance of reciprocal commercial relations with the United States, the Canadian Government felt it necessary at once to issue a Proclamation warning the citizens of the United States that their right of inshore fishing had ceased. This step was considered to be urgent, as the Spring fleet of American fishermen was getting ready for sea, and it was considered that would have been a harsh proceeding to have allowed them to leave their own ports without timely notice, and then have imposed the penalties of law for an offence not intentionally committed. These penalties in New Brunswick and Nova Scotia amount to a confiscation of the vessel and cargoes; and the laws imposing them have now revived, having been in abeyance pending the duration of the Reciprocity Treaty. In Canada no special legislation exists on this subject.

It now has become necessary to consider the further steps to be taken, and the Committee have given their best consideration to the suggestion in Mr. Cardwell's despatch,—that for the current year no interference with American fishermen should take place,—in view of the hope of a change of policy in the United States on the question of Reciprocal Trade.

The Canadian Government receive this expression of the opinion of Her Majesty's Government with the utmost respect. But they doubt whether its adoption would not in the end produce most serious evils. They fear there is no reasonable hope of satisfactory commercial relations being restored with the United States within this year. They think



the prospects of attaining this result in the future will be greatly diminished if the United States fishermen continue to exercise the rights given by the late Treaty. The withdrawal of their privileges a year hence will create more irritation than now, as having the character of retaliation. The step if taken now is plainly and publicly known to be the consequence of the act of the United States. They, and not Great Britain, have cancelled the agreement, and voluntarily surrendered the right of fishing. The course suggested would certainly be regarded by the American people as evidence of weakness on the part of Great Britain, and of an indisposition to maintain the rights of the Colonies ; while it would disturb and alarm the Provinces. The determination to persist in encroachments, and in resistance to law, would be stronger by the impunity of the past year, and the danger of collision, when exclusion becomes necessary, would thus be much increased ; while the value of the right of fishing, for the purpose of negotiation, would be diminished precisely in proportion to the low estimate which the Province would thus appear to have placed upon it.

The Committee would also respectfully submit to Her Majesty's Government that any apparent hesitation to assert an undoubted national right will certainly be misconstrued, and be made the ground for other and more serious exactions, till such a point is reached as neither country can recede from with honour.

The Canadian Government could not consistently, with what they regard as the true interests of the country, consent to leaving the rights of Canada to her own Fisheries in abeyance or in doubt. But they feel the importance of enforcing the recognition of this right of sovereignty in such a manner as will deprive the United States of all just ground of complaint, and of avoiding, so far as practicable, those questions which caused past difficulties. They have, therefore, invited the Maritime Provinces to unite with Canada in the issue to American fishermen, of joint licenses to fish in all Provincial waters at a moderate fee, —to form a fund for the maintenance of a joint marine police. Any vessel attempting to fish without license, will either be required to procure the license from the cruising officer, or will be removed from the fishing grounds. The instructions to be given to the officers will be, to avoid harshness or undue zeal ; and if causes of difficulty arise, they will it is thought, be such as to leave the United States Government no ground of complaint.

The system of license will continue for the current year ; but it is proposed to notify the fishermen in all cases, that it will not be renewed for the future, being only adopted from a desire to avoid exposing them to unexpected loss, their arrangements having been made before the expiry of the Treaty, for this season's fishing.

The Committee trust that Her Majesty's Government will approve of the course adopted, and they earnestly recommend that several small vessels of war be added to the North American Squadron, and that Her Majesty's naval officers be instructed to assist the Provincial authorities in the performance of their duties ; as it is believed that the presence of such a force would greatly diminish the risk of illegal resistance by the American fishermen, to which they might be tempted if they supposed they had only to deal with the Provincial marine police force.

EXECUTIVE COUNCIL,  
Montreal, 23rd March, 1866.

*Mr. Cardwell to Lord Monck.*

(Copy.)

DOWNING STREET, 21st April, 1866.

MY LORD,—I have the honor to acknowledge the receipt of your lordship's confidential despatch of the 31st of March last, accompanied by a Minute of your Executive Council, communicating their views in the course to be adopted with respect to the fisheries, in consequence of the termination of the Reciprocity Treaty with the United States.



I recognize in this minute with much pleasure the moderation and forbearance shewn by the Canadian Government.

The suggestion that American fishermen should be allowed to fish during the current year in all Provincial waters, upon payment of a moderate license fee, meets with the full approval of Her Majesty's Government, and I shall inform the Governors of the Lower Provinces that I trust they will readily concur in it.

In anticipation of this result, Sir James Hope will be instructed to act upon it as soon as he shall have been informed that the arrangement is concluded.

I have, &c.,

(Signed,)

E. CARDWELL.

Governor Viscount Monck.

*Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council, on the 8th January, 1870.*

The Committee having had under consideration the reports of the Minister of Marine and Fisheries, dated respectively the 15th and 20th ult., in connection with certain despatches from Lord Granville, on the subject of protecting the fisheries of Canada, beg to recommend :

That the system of granting fishing licenses to foreign vessels, under the Act 31 Vic., c. 61, be discontinued, and that, henceforth, foreign fishermen be not permitted to fish in the waters of Canada.

Also, that six suitable sailing vessels, similar to *La Canadienne*, in addition to the two vessels at present employed, to be chartered and equipped for the service of protecting the Canadian inshore fisheries from illegal encroachments; the vessels to be connected with the Police Force of Canada, and to form a marine branch of the same.

They further recommend that Her Majesty's Government be requested to maintain on the fishing stations of Canada, a sufficient naval force to prevent riotous combinations among foreign fishermen, and to protect the officers of the police in the execution of their duties.

With reference to Lord Granville's proposal to support the local force, by the presence of only one vessel of war, the Committee consider this measure of support would be inadequate, and hope that Her Majesty's Government may be induced to increase it.

Certified,

W. H. LEE,

Clerk Privy Council.

*Mr. Fish to Mr. Thornton.*

(Copy.)

DEPARTMENT OF STATE,

WASHINGTON, 21st April, 1870.

SIR,—I have the honor to acknowledge the receipt of your note of the 14th instant enclosing a copy of a despatch from His Excellency the Governor-General of the Dominion of Canada, and of the papers which accompanied it.

I must invite your attention, and that of Her Majesty's authorities, to the first paragraph of the Order in Council, of the 8th January last, as quoted in the memorandum of the Prime Minister of the Dominion of Canada, accompanying the despatch of His Excellency the Governor-General, which paragraph is in the words following, *to wit* :—

"That the system of granting fishing licenses to foreign vessels under the Act 31 Vic., 'Cap. 61, be discontinued, and that, henceforth, foreign fishermen be not permitted to fish 'in the waters of Canada.'"



The words *in italics* seem to contemplate an interference with rights guaranteed to the United States under the first article of the Treaty of 1818, which secures to American fishermen the right of fishing in certain waters understood to be claimed at present as belonging to Canada.

I have, &c.,

(Signed,)

HAMILTON FISH.

Edward Thornton, Esq.

*Mr. Thornton to the Governor-General.*

(Copy.)

WASHINGTON, 22nd April, 1870.

SIR,—With reference to Your Excellency's despatch, No. 11, of the 11th instant, enclosing a communication from Sir John A. Macdonald relative to the Canadian fisheries, I have the honor to enclose a copy of the note which I have received from Mr. Fish, and in which he invites my attention to the first paragraph of the Order in Council, of 8th January last. Mr. Fish also made a verbal communication to me upon the same subject yesterday, and said that the phrase "waters of Canada" might be supposed to include some of those waters in which, by the Treaty of 1818, American fishermen have a right to fish, but which, by the extension of the boundaries of Canada, may now be comprised within the "waters of Canada."

I assured Mr. Fish of my conviction that the above mentioned Order in Council has no intention of abridging any of the rights to which citizens of the United States are entitled by the Treaty of 1818, and that I would call Your Excellency's attention to the subject.

I have, &c.,

(Signed,)

EDWARD THORNTON.

Governor-General, Sir John Young.

(Copy.)

DEPARTMENT OF MARINE AND FISHERIES,

OTTAWA, 28th April, 1870.

The Minister of Marine and Fisheries has the honor to state, with reference to Mr. Thornton's despatch of the 22nd instant, accompanied by a note from Mr. Secretary Fish, in which the latter calls attention to the first paragraph of the Order in Council, of 8th January last, and expresses his apprehension of interference with certain fishing rights guaranteed to the United States by Act 1, of the Convention of 1818, that the wording of the Minute of Council referred to clearly shows, by providing for the prevention of "illegal encroachment by foreigners" on the inshore fisheries of Canada, that the Canadian Government never contemplated any interference with rights secured to United States citizens by the treaty in question, between the British and American Government.

Mr. Thornton was therefore quite right in assuring Mr. Fish, in general terms, that there could be no intention to abridge any rights to which citizens of the United States are entitled by treaty.

The undersigned remarks, that Mr. Fish also labors under a misapprehension in supposing that the present boundaries of the Dominion comprise any fishing grounds affected by the existing treaty, stipulations to which Mr. Fish's note refers, which were not formerly within the bounds of the old Province of Canada.

With regard to the general effect of the first paragraph of the Order in Council of 8th January last, quoted at length, and underlined in Mr. Fish's note, the undersigned would further observe that the Act relating to fishing by foreign vessels, under the authority of which licenses were issued to United States fishermen, applied to all foreigners, and as the



discontinuance of the license system, which had existed under it, applies also to other foreign vessels and fishermen frequenting our coasts, and who are not entitled to fish anywhere in the waters of Canada, the terms of such formal discontinuance were necessarily general, and in case they could apply only to those waters within which our "inshore fisheries" are situated, and in which neither American nor foreign subjects have any legal right to fish.

The whole respectfully submitted.

(Signed,)

P. MITCHELL,  
Minister of Marine and Fisheries.

*Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council on the 10th May, 1870.*

The Committee of Council have had before them the Despatch, No. 13, dated 22nd April, 1870, from Her Majesty's Minister at Washington, enclosing a copy of a note which he received from Mr. Fish, in which he invites his attention to the first paragraph of the Order in Council of the 8th of January last, discontinuing the system of fishing licenses, and stating that Mr. Fish also made a verbal communication to him upon the same subject, and said that the phrase "Waters of Canada" might be supposed to include some of those waters in which, by the Treaty of 1818, American fishermen have a right to fish, but which, by the extension of the boundaries of Canada, may now be comprised within the "Waters of Canada."

Mr. Thornton states that he assured Mr. Fish of his conviction that the above-mentioned Order in Council has no intention of abridging any of the rights to which Citizens of the United States are entitled by the Treaty of 1818, and that he would call Your Excellency's attention to the subject.

The Committee have also had under consideration the Report dated 28th April, 1870, from the Honorable the Minister of Marine and Fisheries, to whom the above despatch was referred, and they entirely concur in the views expressed in that Report, and advise that a copy thereof be transmitted by Your Excellency to Mr. Thornton, for the information of the United States Government.

Certified.

(Signed,)

W. H. LEE,  
Clerk to Privy Council.

To the Honorable the Minister of Marine, and Fisheries, &c., &c.

(Copy—CANADA—No. 123.)

DOWNING STREET, 19th May, 1870.

SIR,—With reference to my Despatch, No. 98, of the 30th April, enclosing a copy of a letter addressed to the Board of Admiralty, respecting certain instructions to be issued to the officers commanding Her Majesty's ships engaged in the protection of the Canadian Fisheries, I have the honor to transmit to you the enclosed copy of the reply which has been received from that Department.

(Signed,)

I have, &c.,  
FREDERIC ROGERS,  
For Earl Granville.

The Right Honorable Sir John Young, Baronet,  
G.C.B., G.C.M.G., &c., &c., &c.



*Mr. Wolley to the Under Secretary, Colonial Office.*

(Copy.)

ADMIRALTY, May 5th, 1870.

SIR,—With reference to your letter of the 30th ultimo, in regard to the protection of the Canadian Fisheries, I am commanded by My Lords Commissioners of the Admiralty to request you will inform the Secretary of State for the Colonies, that, on receiving from the Foreign Office notice of the resolution of the House of Representatives at Washington in regard to the intention of the Government of the Dominion of Canada to suspend the licenses to foreign vessels for the inshore fisheries on the coasts of the Dominion, orders were sent to the Naval Commander-in-Chief in the West Indies (on the 9th April last), to detach a sufficient force to Canadian waters to protect Canadian fishermen, and maintain order, co-operating cordially with any United States force sent on the same service.

I have, &c.,

(Signed,)

THOMAS WOLLEY.

The Under Secretary of State for the Colonies.

*With Reference to the Protection of the Fisheries.*

(Copy.)

DEPARTMENT OF MARINE AND FISHERIES,  
OTTAWA, 21st May, 1870.

In connection with carrying out the measures approved by the British Government for excluding foreign fishing vessels from the inshore fisheries along the Atlantic coasts of British America, the undersigned begs leave to draw the attention of the Governor General in Council to the position of such of those fishing grounds as are situated within the provincial jurisdiction of Prince Edward Island.

The mackerel fishers pursue their calling at different seasons in various places around the island, chiefly inshore, passing and repassing to and fro between the mainland and the island limits; and many of their vessels are accustomed to frequent the bays and harbors to obtain supplies, and ship and tranship cargoes. These and other purposes for which the practice obtains are fulfilled in violation of treaty stipulations, and in practice they must tend to subvert any general system of protection adopted in support of colonial rights and privileges. Certain of the local merchants and other dealers, as well as many of the fishermen and farmers, profit by such custom and connive at its enjoyment. The island authorities have not therefore manifested any active desire to exclude American fishing vessels, nor (so far as is yet known) have they made any special arrangements for enforcing their own statute affecting foreign fishing vessels, under the Treaty of 1818. During the existence of the license system, their laxity in this respect was the cause of loss and injury to Canada and occasional serious complaints. It also added materially to other causes of the failure of the temporary system in question which the British and Canadian Governments had devised and continued in a spirit of conciliation, and the successful operation of which was so very desirable. The undersigned had the honor to bring this subject under the notice of the Government in reports of the 15th September and 9th December, 1868, and on subsequent occasions. An investigation was also made into the facts by the Hon. Stewart Campbell, M.P., for the County of Guysboro', Nova Scotia, acting under official instructions, and the result was laid before Council. The anomalous position of this matter, as regards the island fisheries, will doubtless be now further aggravated by the want of any provincial force similar to the Marine Police of Canada, whose action is necessarily confined within Canadian limits, and by the existing discrepancy between the Dominion and Island Statutes relating to foreign fishing vessels. The strict exclusion of these fishermen from the inshore fishing stations of Canada, will probably force larger numbers of them than usual into the adjacent waters of Prince Edward Island. And as the amended Act of the recent Session of Parliament dispenses with previous warning, while that of the Island (6 Vic. Cap. 14) still allows twenty-four



hours notice to depart, within which time any fast schooner may haul off and on again, when "hovering about the three miles limit," without substantially hindering their operations. It is more than probable that trespassers around the Island will thus succeed in using the fishing privileges and endeavour to escape detection or capture. Those, however, which may enter ports, bays and harbours for unlawful purposes ought not under any protest to be enabled to evade the consequences of flagrant and illegal intrusions. But, unless Her Majesty's ships shall compel American vessels to conform strictly to the treaty between Great Britain and the United States, it is quite improbable that the policy of protection will be practically enforced with any degree of uniformity as a public measure of justice.

The Government vessels actually under orders for this service consisted of

The iron screw steamer, *Lady Head*, Capt. P. A. Scott, R.N.

The schooner, *La Canadienne*, Napoleon Lavoie, Esq., Stipendiary Magistrate.

" " *Water Lily*, Lieut. D. M. Browne, R.N.

" " *Ida E.*, Jas. A. Tory, Esq., Fishery Officer.

" " *E. G. McLean*, H. E. Betts, Esq., Fishery Officer.

" " *England*, Lieut. G. Vallancey Story, R.N.

" " *Stella Marie*, L. H. Lachance, Esq., Fishery Officer.

" " *Sweepstake*, Lieut. J. Stanley Ewen, R.N.

(The latter temporarily assigned to the command of the *Water Lily*.)

These vessels have been suitably officered—by retired officers of the Royal Navy, in as many instances as possible—for service throughout the season. They are placed under the general command of Captain Scott and Mr. Lavoie, the *Stella Marie* and *La Canadienne* being under control of the last named officer, and the others, enumerated above, being subject to the orders of the first named gentleman. Their cruising stations will lie within the three miles or inshore limits of Canada, according to the special instructions already issued by the Government. The two officers in chief command are instructed to arrange these stations in concert with and conformable to the advice of the Admiral, with whom they should be formally placed in communication. Every endeavour will be made to secure an efficient and discreet performance of the peculiar duties entrusted to the persons engaged in this delicate service, and as it involves grave responsibility and considerable expense, the Government of Canada would regret to observe that any differences of separate colonial jurisdiction or any contradictory circumstances of Provincial situation and sectional advantage over which Canada can exercise no present influence, such as are presented in the case of Prince Edward Island, may impair the effect and defeat the object of the important measures adopted by the British and Canadian Government for the due protection of the Fisheries.

It is therefore respectfully suggested that this matter be brought under the notice of Her Majesty's Government with a view to instructions being given to Vice Admiral Wellesley, to devote especial attention to the observance of treaty rights by foreign vessels in the waters of Prince Edward Island. Also until the necessary action can take place by the Legislature of that Province to assimilate their statute to the Canadian law regarding foreign fishermen, that the Imperial Act, *59 Geo. III, Cap. 38*, may be applied in the Island waters so as to secure the uniform and consistent observance of Imperial jurisdiction and policy.

It is further recommended that the Lieut.-Governor of Prince Edward Island be requested to issue the usual commissions of the peace to the British Naval officers employed in protecting the fisheries.

The whole respectfully submitted,

(Signed,)

P. MITCHELL,  
Minister of Marine and Fisheries.



*Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council on the 25th May, 1870.*

(Duplicate.)

The Committee of Council have had under consideration the memorandum dated 21st May, 1870, from the Honorable the Minister of Marine and Fisheries respecting the encroachment of foreign fishing vessels on the waters within the jurisdiction of Prince Edward Island, and suggesting the steps which he deems necessary to be taken to insure the strict observance by foreigners of British Treaty rights, and they respectfully advise that the suggestions of the Minister be concurred in, and a copy of his memorandum be forwarded by your Excellency to H. M. Secretary of State for the Colonies.

They further advise, as suggested by him, that the Lieut.-Governor of Prince Edward Island be requested to issue the usual commissions of the peace to the British Naval officers employed in protecting the fisheries.

Certified,

(Signed,)

WM. H. LEE,

Clerk of Privy Council.

To the Honorable

The Minister of Marine and Fisheries, &c.

*Minister at Washington to the Governor-General.*

(Copy.)

WASHINGTON, 24th May, 1870.

SIR,—I have the honor to transmit, herewith, copies of a circular which has been addressed by the Secretary of the Treasury to the Collectors of Customs at certain ports on the Eastern Coast of the United States for the information of United States fishermen, who may engage in fishing in the waters in the neighborhood of Canada.

It is possible that these circulars may be useful to the cruisers about to be employed in maintaining order at the fisheries by enabling them to show to United States fishermen the opinions of their own Government with regard to their rights.

I have, &c.,

(Signed,)

EDWARD THORNTON.

His Excellency, The Right Hon. Sir John Young, Bart., &c., &c.

*Circular relating to Canadian In-Shore Fisheries.*

TREASURY DEPARTMENT,

WASHINGTON, May 16, 1870.

SIR,—In compliance with the request of the Secretary of State, you are hereby authorized and directed to inform all masters of fishing vessels, at the time of clearance from your port, that the authorities of the Dominion of Canada have terminated the system of granting fishing licenses to foreign vessels, under which they have heretofore been permitted to fish within the maritime jurisdiction of the said Dominion, that is to say, within three marine miles of the shores thereof; and that all fishermen of the United States are prohibited from the use of such in-shore fisheries, except so far as stipulated in the first article of the Treaty of October 20, 1818, between the United States and Great Britain, in virtue of which the fishermen of the United States have, in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks, from Mount Joly, which was, when the treaty was signed, on the southern coast of



Labrador, to and through the straits of Belle Isle, and thence northwardly, indefinitely along the coast, without prejudice, however, to any exclusive rights of the Hudson's Bay Company ; and have also liberty for ever, to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland, above described, and of the coast of Labrador, unless the same, or any portion thereof, be settled, in which case it is not lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground ; and also, are admitted to enter any other bays or harbors for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever, subject to such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges reserved to them as above expressed.

The Canadian Law of the 22nd of May, 1868, 31 Victoria, Cap. 61, entitled "An Act respecting Fishing by Foreign Vessels," among other things, enacts that any commissioned officer of Her Majesty's Navy, serving on board of any vessel of Her Majesty's Navy, cruising and being in the waters of Canada for purpose of affording protection to Her Majesty's subjects engaged in the fisheries ; or any commissioned officer of Her Majesty's Navy, fishery officer, or stipendiary magistrate on board of any vessel belonging to or in the service of the Government of Canada, and employed in the service of protecting the fisheries, or any officer of the customs of Canada, sheriff, magistrate, or other person duly commissioned for that purpose, may go on board of any ship, vessel, or boat within any harbor in Canada, or hovering (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbors in Canada, and stay on board so long as she may remain within such place or distance. It also provides, that if such ship, vessel, or boat be bound elsewhere, and shall continue within such harbor or so hovering for twenty-four hours after the master shall have been required to depart, any one of such officers or persons as are above mentioned may bring such ship, vessel, or boat into port and search her cargo, and may also examine the master upon oath, touching the cargo and voyage, and if the master or person in command shall not truly answer the questions put to him in such examination, he shall forfeit four hundred dollars ; and if such ship, vessel, or boat be foreign, or not navigated according to the laws of the United Kingdom or of Canada, and have been found fishing, or preparing to fish, or to have been fishing (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbors of Canada, not included within the above mentioned limits, without a license, or after the expiration of the period named in the last license granted to such ship, vessel, or boat, under the first section of this Act, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited. And that all goods, ships, vessels, and boats, and the tackle, rigging, apparel, furniture, stores, and cargo liable to forfeiture under this act, may be seized and secured by any officers or persons mentioned in the second section of this act ; and every person opposing any officer or person in the execution of his duty under this act, or aiding or abetting any other person in any opposition, shall forfeit eight hundred dollars, and shall be guilty of a misdemeanor, and upon conviction be liable to imprisonment for a term not exceeding two years. On the 8th January, 1870, the Governor-General of the Dominion of Canada, in council, ordered that suitable sailing vessels, similar to *La Canadienne*, be chartered and equipped for the service of protecting the Canadian in-shore fisheries against illegal encroachments by foreigners, these vessels to be connected with the police force of Canada, and to form a marine branch of the same. It is understood that by a change of the boundaries between Canada and Labrador, the Canadian territory now includes Mount Joly and a portion of the shore to the east thereof, which in the treaty of 1818, was described as the southern coast of Labrador.

This municipal change of boundary does not, however, interfere with the rights of American fishermen, as defined by the treaty, on that portion of what was the southern coast of Labrador, east of Mount Joly.

Very respectfully,

GEO. S. BOUTWELL,  
Secretary.



*Telegram from Administrator Prince Edward Island, to the Governor General.*

(Copy.)

CHARLOTTETOWN, P. E. I., May 25th, 1870.

"Does the Dominion intend issuing fishery licenses to American subjects as here tofore? My Government wish to pull in unison with yours. Please reply per telegraph."

(Signed,)

R. HODGSON,

Administrator.

Answered May 26th, 1870.

Copy to Secretary of State May 27th.

„ Admiral,

„

*The Governor General to the Admiral.*

(Copy.)

OTTAWA, May 27th, 1870.

SIR,—With reference to my letter of the 18th May, on the subject of the fisheries, I have the honor to transmit herewith to Your Excellency a copy of a telegram which I have May 25th. received from the Administrator of the Government of Prince Edward May 26th. Island, together with a copy of the reply which I sent to Sir R. Hodgson on the part of my Government.

I have, &c.,

(Signed,)

JOHN YOUNG.

His Excellency

Vice-Admiral G. G. Wellesley, Halifax.

*Telegram to Sir R. Hodgson, Prince Edward Island.*

(Copy.)

OTTAWA, May 26th, 1870.

"Pleased to hear that you are ready to co-operate with us. Canadian Government have decided not to grant licenses to fish to foreign vessels. Have placed seven schooners and one steamer along our shores as marine police to protect fisheries. Her Majesty's Government have ordered several ships of war to support them. Fuller particulars by mail. Desire concurrence of your Government in our system, and wish you would grant commissions to our officers to ensure complete enforcement of policy.

(Signed,)

JOHN YOUNG.

Copy to the Admiral,

May 27th, 1870.

*On Circular of United States Treasury Department respecting Fishing by American Vessels.*

(Copy.)

DEPARTMENT OF MARINE AND FISHERIES,

OTTAWA, 31st May, 1870.

The undersigned notices in the circular of the Secretary of the Treasury to United States Collectors of Customs, dated the 16th instant, communicated to the Governor General by the British Minister at Washington, under despatch of the 24th instant, informing them of the cessation of the system of issuing licenses to foreign fishing vessels, which admitted American fishermen to the inshore fisheries of Canada, that Mr. Secretary Boutwell commits two errors, with which it may be advisable to acquaint Mr. Thornton.



This circular quotes at some length the Canadian statute 31 Vict., cap. 61, passed on the 22nd May, 1868, by which twenty four hours' notice to foreign fishing vessels is provided for ; but omits to mention the amending Act, assented to on the 12th instant, by which the said twenty-four hours' notice has been dispensed with altogether.

The Government of Canada having no wish to see the owners of United States fishing vessels misled, and perhaps incurring, unawares, the penalties of peremptory seizure and confiscation, through erroneous official information proceeding from their own Government ; and considering it, moreover, desirable that the possibility should be avoided of any such excuse of misinformation intervening between positive acts of trespass and their legal consequences, the undersigned respectfully suggests that an early opportunity should be afforded to the United States Treasury Department to correct this error.

A copy of the amended Act relative to fishing by foreign vessels is herewith, for transmission through Mr. Thornton.

The second mistake occurs in the following paragraph of Mr. Boutwell's letter of instruction to United States Customs Officers :—

"It is understood that by a change of the boundaries between Canada and Labrador, the Canadian territory now includes Mount Joly and a portion of the shore to the east thereof, which in the treaty of 1818 was described as the southern coast of Labrador."

There has been no recent change of the boundaries between Canada and that part of Labrador to which the Convention of 1818 relates. In 1825 a portion of the northern shore of the Gulf of St. Lawrence, west of Blanc Sablon, formerly placed for judicial purposes under the Government of Newfoundland, was re-annexed to Lower Canada, without, however, affecting the admission of United States citizens to any part of the coast described in the treaty. That part of the coast of the then Province of Lower Canada, now the Province of Quebec, along which Americans might fish, &c., under the convention of 1818, is defined on its western boundary as at Mount Joly, on the southern coast of Labrador. The limits extend thence eastwardly to and through the Straits of Belleisle an indefinite distance down the Labrador Peninsula.

Lat. 50°, 06', 15".  
Long. 61°, 43', 20".

Lat. 51°, 25', 5" north.  
Long. 57°, 8', 15" west  
from Greenwich.

The eastern boundary of the former Province of Lower Canada and of the present Province of Quebec is at Blanc Sablon Bay, in the entrance to the Straits of Belleisle. This provincial boundary has always included Mount Joly and all of the coast of Southern Labrador situated between that point and the eastern limit of Canada.

It is difficult to conceive whence Mr. Boutwell derives the information that it is "by a change of the boundaries between Canada and Labrador, the Canadian territory *now* includes Mount Joly and a portion of the shore to the east thereof."

There can be no doubt that even had any such change taken place, United States citizens would still be entitled to enjoy any express or unreserved privileges guaranteed to them by previous treaties with Great Britain. But it may as well be distinctly understood that the present fishery policy of the Canadian Government, to which the Secretary of the United States Treasury refers, is not connected with any acquisition of confederated territory, nor any alteration of boundary.

The undersigned further respectfully suggests, that copies of Mr. Boutwell's circular, together with a copy of the Minute of Council which may be adopted on the present report, be furnished to Vice-Admiral Wellesley.

The whole respectfully submitted.

(Signed.)

P. MITCHELL,  
Minister of Marine and Fisheries.



*Mr. Thornton to the Governor General.*

(Copy.)

WASHINGTON, June 1st, 1870.

SIR—On the receipt of Your Excellency's despatch No. 22 of the 14th ultimo, I transmitted a copy of it and of its enclosures to Mr. Fish, and I have now the honour to enclose copy of a note in answer to mine, and which I received yesterday.

Your Excellency will thus become acquainted with the arguments which Mr. Fish puts forward in support of his objection to the Order in Council of the 8th January last. I am not myself certain that there has been no alteration in the limits of Canada since the Act of 1825 quoted by Mr. Fish; but if it be true that the Dominion extends to Ance Sablon the waters from this point west-ward to Mount Joly, as well as those on the coast of the Magdalen Islands must be comprised in the "waters of Canada" and it therefore does not seem an unreasonable request on the part of Mr. Fish, that the above mentioned Order in Council should be modified as far as United States fishermen are concerned.

(Signed,) EDWARD THORNTON.

His Excellency, The Right Honorable Sir John Young, Bart.,  
G.C.B., G.C.M.G., &c., &c., &c.

*Mr. Fish to Mr. Thornton.*

(Copy.)

DEPARTMENT OF STATE,

WASHINGTON, May 31, 1870.

SIR—I have the honour to acknowledge your note of the 18th instant, addressed to Mr. Davis, enclosing a despatch from the Governor General of Canada, forwarding copy of a Minute of the Privy Council, and also a report of the Minister of Marine and Fisheries, dated 28th April last.

The reiteration in this Report of the assurance which you had previously given that there could be no intention on the part of the Dominion of Canada to abridge any rights to which the citizens of the United States are entitled by Treaty, is in accordance with the confident expectations of this Government.

It had, however, attracted the notice of the Government, that by an Order in Council, dated the 8th of January last it was ordered "that henceforth all foreign fishermen be prevented from fishing in the waters of Canada." The question arose, what are the waters of Canada?

At the date of the Treaty of 1818 the boundary of Canada as understood was defined by the 27th chap. 49 George III. entitled, an Act for establishing Courts of Jurisdiction in the Island of Newfoundland and the islands adjacent, and for the re-annexing part of the coast of Labrador and the islands lying on said coast, to the Government of Newfoundland (30th March, 1809), by the 14th section of which it was enacted "that such part of the Coast of Labrador from the River St. John to Hudson Strait, and the said island of Anticosti, and all other smaller islands so annexed to the Government of Newfoundland by the said proclamation of the 7th day of October, one thousand seven hundred and sixty-three," (except the said islands of Madelaine) "shall be separated from the said Government of Lower Canada, and be again re-annexed to the Government of Newfoundland."

The mouth of the River St. John referred to in this Act is understood to be between the 64th and 65th meridian of Longitude west from Greenwich.

We further understood that in June, 1825, by the 9th section of cap. 59, 6 Geo. IV. entitled, an Act to provide for the extinction of feudal and seigniorial rights and burthens on lands held in *Titre de Fief* and à *Titre de Cens*, in the Province of Lower Canada, and for the gradual conversion of those tenures into the Tenure of Free and Common Soceage, and



for other purposes relating to said Province, it was enacted "that so much of the said coast "as lies to the westward of a line to be drawn due north and south from the bay or harbor "of Ance Sablon, inclusive as far as the fifty-second degree of north latitude with the "Island of Anticosti, and all other islands adjacent to such part as last aforesaid of the "Coast of Labrador shall be, and the same are hereby re-annexed to and made a part of the "said Province of Lower Canada and shall henceforward be subject to the laws of the said "Province and to none other."

The Bay or Harbor of Ance Sablon is understood to be in the longitude of  $57^{\circ} 8'$  at or near the entrance of the Straits of Belle Isle.

The Treaty of 1818 secures to the inhabitants of the United States in common with the subjects of Her Britannic Majesty the liberty to take fish of every kind on the shore of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks from Mount Joly on the southern coasts of Labrador to and through the States of Belle Isle and thence northward by &c., &c.

Mount Joly thus fixed by Treaty as the westernmost limit of the coast of Labrador, of the liberty of fishing for the inhabitants of the United States is understood to be in the longitude of about  $61^{\circ} 40'$ . From that point eastward and northward on the shores of what was then called Labrador, the fishermen of the United States have the liberty to take fish.

The Act last above recited seems to establish the boundaries and the jurisdiction of Canada as extending to the Bay of Ance Sablon, about four and a half degrees of longitude to the east of Mount Joly, and to include the Magdalen Islands.

It was under the impression that this Act establishes the jurisdiction and the eastern boundary of Canada, as extending to a line drawn due north and south from the Bay or Harbor of Ance Sablon, and including the Magdalen Islands that on the 21st April last I invited your attention to the first paragraph of the Order in Council of the Dominion of Canada of the 8th January last, declaring that henceforth all foreign fishermen be prevented from fishing in the waters of Canada "as contemplating a possible interference with "the rights guaranteed to the United States, under the Treaty of 1818."

The Minute of the Privy Council and the Report of the Minister of Marine and Fisheries of which you have given me copies, give assurance of the intent of the authorities of the Dominion Government not to abridge those rights, but the Order in Council may be interpreted by those to whom its execution is entrusted to authorise their interference with fishermen of the United States while in the exercise of their guaranteed liberty. If our understanding that the boundary and jurisdiction of Canada extend to the Bay or Harbor of Ance Sablon, and include the Magdalen Islands be correct, "the waters of Canada" embrace the coast of, what in 1818 was the Coast of Labrador from Mount Joly to the Bay of Ance Sablon and include also the Magdalen Islands.

Desirous to avoid the possibility of any misapprehension on the part of those who may be charged with the execution of the Order in Council, I beg to call your attention to the Acts to which I have referred, and to request, in case I am in error with regard to the Eastern Boundary and the extent of jurisdiction of Canada, that you will advise me of the real boundary and jurisdiction. If I am correct in this respect, and if that part of the coast of what in 1818 was known as Labrador included between Mount Joly and the Bay or Harbor of Ance Sablon, or the Magdalen Islands, be in the "waters of Canada." I do not doubt that the authorities of the "Dominion" will recognise the necessity of such modification of the Order in Council of the 8th of January last, or of such additional instructions to be given, as will secure the fishermen of the United States from interference while in the exercise of the liberty guaranteed to them by the Treaty of 1818.

I have &c.

(Signed.)

HAMILTON FISH.

Edwd. Thornton, Esq., C.B.



*COPY of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council, on the 7th June, 1870.*

The Committee of Council have had under consideration the memorandum dated 31st May, 1870, from the Honorable the Minister of Marine and Fisheries, in reference to the despatch (No. 23) from Mr. Thornton, dated 24th May ult., and the circular which has been addressed by the Secretary of the Treasury to the United States to Collectors of Customs, for the guidance of American fishermen engaged in their pursuit in the neighbourhood of Canada.

The Committee concur in the views expressed by the Minister in his said memorandum, and advise that a copy thereof be communicated to Mr. Thornton for the information of the United States Government.

Certified.

WM. H. LEE,  
Clerk of Privy Council.

To the Honorable  
The Minister of Marine and Fisheries.

(Copy.—No. 29.)

WASHINGTON, 13th June, 1870.

SIR,—I have the honor to acknowledge the receipt yesterday of Your Excellency's despatch, No. 36, of the 8th instant, enclosing copy of a minute of the Privy Council of the Dominion with a report of the Minister of Marine and Fisheries, pointing out errors in Mr. Secretary Boutwell's circular of the 16th ultimo.

The first error pointed out by the Minister of Marine and Fisheries is the omission of the amendment of the 12th ult., to the Act of May 22nd, 1868; but as Your Excellency will remember that you only communicated that amendment to me in your despatch, No. 26, of the 17th ult., and as I only forwarded it to Mr. Bancroft Davis, then Acting Secretary of State, on the 20th ult., I can hardly accuse Mr. Boutwell of an error in having made no mention of it on the 16th ult. I will, however, call Mr. Fish's attention to the matter, and will suggest the issue of a further circular with reference to the amendment in question.

With regard to the second error, alluded to by Hon. Mr. Mitchell, I understood that by the Act 49th, Geo. III, Cap. 27, Canada only extended on the coast of Labrador to the mouth of the St. John, between 64 and 65 degrees west longitude. This was its extent when the Treaty of 1818 was concluded, which granted to citizens of the United States the right to fish on the coast of Labrador, from Mount Joly eastward. The limit of Canada was, however, extended by the 9th Section of the Act 6th, Geo. IV, Cap. 59, to Ance Sablon, east of Mount Joly; so that the coast between these two points on which United States citizens had a right to fish, was from that time, and is now comprised within the jurisdiction and waters of Canada. This is the change of boundary since the Treaty of 1818, to which I understand Mr. Boutwell to allude.

I have, &c.,

(Signed,)

EDWARD THORNTON.

To His Excellency

The Right Hon. Sir John Young, Bart., G.C.B.

*COPY of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council, on the 1st July, 1870.*

On the memorandum from the Honorable the Minister of Marine and Fisheries, dated 14th June, 1870, on the subject of the despatch of Mr. Thornton, Her Majesty's Minister at Washington, of the 1st ult., respecting the limits of the Canadian fisheries.



The Committee concur in the memorandum of the Minister of Marine and Fisheries, and recommend accordingly.

Certified,

WM. H. LEE,

Clerk of Privy Council.

To the Honorable the Minister of Marine and Fisheries.

*Memorandum on Mr. Thorntons' Despatch of 1st instant.*

The first communication from Mr. Thornton, dated 22nd April, 1870, covering a note of the previous day's date from Mr. Fish, both of which are referred to in the report of the undersigned, of 28th ultimo, relates to the wording of the Order in Council of 8th January last, and expresses apprehension of "interference with rights guaranteed to the United States, under the first article of the Treaty of 1818, which secures to American fishermen the right of fishing in certain waters understood to be claimed at present as belonging to Canada." Mr. Thornton's despatch also mentions a verbal communication on the same subject from Mr. Fish. It was supposed to have reference to some "recent" change of boundaries incident to confederation, or the acquisition of the Hudson's Bay Company's rights on the Labrador coast, the latter of which are expressly reserved in the said treaty. Assurance was, therefore, conveyed to Mr. Fish, in pursuance of the Minute of Council of 10th ultimo, that no such interference as that apprehended could possibly be contemplated by the Canadian Government.

A further despatch, from Mr. Thornton, of 1st instant, enclosing Mr. Fish's correspondence at length, now explains the full meaning of Mr. Fish's objection to the phraseology of the Order in Council of 8th January last, and states the argument on which Mr. Thornton acquiesces in Mr. Fish's request that the said order should be modified as far as United States fishermen are concerned.

Mr. Fish takes exception to the terms of this Order in Council, because of the words "waters of Canada," which have, since 1825, included part of the southern coast of Labrador and islands in the Gulf of St. Lawrence, and which at the time of the Treaty of 1818, were subject to the municipal jurisdiction of Newfoundland.

The Act (6 Geo. IV., c. ) by which this ancient change of provincial boundaries was effected, is an Imperial statute, and necessarily reserves by implication all existing treaty arrangements of an unconditional nature between the Empire and foreign powers. Such, also, would be the necessary effect of legislative or executive action regarding any matter of local jurisdiction.

The territory and waters affected would not cease to be British because of changes of intercolonial boundaries established by the Imperial Parliament.

Mr. Fish seems to desire a modification of this Order in Council, chiefly with a view to providing against any misapprehension in respect of the treaty rights of United States citizens on the part of those who may be charged with its execution, and suggests that additional instructions should issue. The undersigned considers that the subsequent Order in Council, of 10th ultimo, is sufficiently explicit, and ought to be quite satisfactory. If anything more were really necessary to assure Mr. Thornton, and to remove Mr. Fish's apprehensions, reference might be made to the Canadian Statutes relating to fishing by foreign vessels (copy herewith), and to the following extract from the Special Instructions (dated 14th ultimo), which govern officers engaged in the fisheries protection service :—

1. "United States fishermen may exercise the liberty of fishing, in common with British subjects, along that part of the coast of Canada extending from Mount Joly, near the River Grande Natashquan, to the easterly limit of Canada, at Blanc Sablon Bay, and around the Magdalen Islands; and enjoy freedom also to land and cure fish on certain of the unsettled shores of the Labrador coast. Wherever any settlement exists within these limits, the privilege of landing and curing fish may be enjoyed by previous agreement with the settlers, or with proprietors of the ground."

The Order in Council, of 10th ultimo, explains the necessary use of the general descriptive terms "waters of Canada," to which exception is taken, and as there is not the remotest probability of any such interference with the rights of American fishermen, as Mr. Fish seems to apprehend, the undersigned cannot perceive any sufficient reason why the Minute of Council, of 8th January last, should be modified in the way suggested by Mr. Thornton.

(Signed,)

P. MITCHELL,

Minister of Marine and Fisheries.

Department of Marine and Fisheries,  
Ottawa, 14th June, 1870.

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*Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General, in Council, on the 9th June, 1870.*

\* The Committee of the Privy Council, having recently had under their consideration a number of questions of great importance to the Dominion, among which are the proposed withdrawal of Imperial troops from Canada; the question of fortifications; the recent invasion of Canadian territory by citizens of the United States, and the previous threats and hostile preparations, which compelled the Government to call out the Militia, and to obtain the consent of Parliament to the suspension of the Habeas Corpus Act, the systematic trespasses on Canadian fishing grounds by United States fishermen, and the unsettled question as to the limits, within which foreigners can fish under the treaty of 1818, are of opinion that it is desirable that their views on this question should be personally represented to Her Majesty's Government by a member of the Privy Council, and that they recommend that the Honorable the Postmaster General be requested to proceed to England, and endeavour to induce Her Majesty's Government to take prompt action in the several matters above referred to, in accordance with the views expressed in the Minutes of Council relating thereto, and in any other Minutes which may hereafter be referred to him.

The Committee of Council are of opinion that the Postmaster General should call the attention of Her Majesty's Government to the reports of the 15th and 20th December last, from the Minister of Marine and Fisheries, and should urge the importance of securing with as little delay as possible, the restoration to Canada of the rights which she enjoyed prior to the Reciprocity Treaty, under the interpretation given to the Treaty of 1818, by the Crown Law Officers of England.

The Committee of Council cannot conceal their apprehension that, if the citizens of the United States are any longer permitted, as they have been doing the last four years, to fish in waters, where, according to our interpretation of the Treaty of 1818, they are trespassers, it may be more difficult to obtain an amicable solution of the point in dispute.

The Committee of Council are fully alive to the importance of taking action at an early period, with regard to the construction of a Pacific Railroad through Canadian territory, but they think it is better to postpone the consideration of the subject, until after the departure of the delegates from British Columbia, when instructions will be sent to the Postmaster General on this important subject.

Certified,

WM. H. LEE,

Clerk to Privy Council.



*Mr. Thornton to the Governor-General.*

WASHINGTON, July 1st, 1870.

Sir,—With reference to my despatch, No. 28, of the 11th ultimo, in which I enclosed copy of a note which I had addressed to Mr. Fish on the 11th ultimo.

June 30th. I have now the honor to enclose, for Your Excellency's information, copy of the answer which I have received from that gentleman.

I have, &c.,

(Signed), EDWARD THORNTON.

His Excellency Sir John Young, Bart., &c., &c.  
Canada.

*Mr. Fish to Mr. Thornton.*

(Copy.)

DEPARTMENT OF STATE,

WASHINGTON, 30th June, 1870.

Sir,—I have the honor to acknowledge the receipt of your note of the 11th instant, in which you confirm my impression that Admiral Wellesley will have modified the directions to the officers under his command engaged in the prosecution of the Canadian Fisheries so that they shall be in conformity with the views of the Admiralty, and in which you point out, under instructions from the lamented Earl of Clarendon, that the circular of the 16th ultimo, issued by the Secretary of the Treasury of the United States respecting the Canadian In-shore Fisheries, may lead to further misunderstanding, inasmuch as it limits the Maritime jurisdiction of the Dominion of Canada to three marine miles from the shores thereof.

In view of the claims heretofore presented by Her Majesty's Government, and which, as it contends, are supported by the Law of Nations and the stipulations of the Treaty of 1818, as to the extent of British Maritime jurisdiction in the waters in which the fisheries are prosecuted in the eastern coasts of North America, the President is pleased to recognize in the tenor of the despatches and instructions which have been addressed by Her Majesty's Government to the Canadian authorities, and to Admiral Wellesley, a generous spirit of amity which is reciprocated by the United States. Animated by that spirit he directs that Her Majesty's Government be informed that the description of the limit of Canadian Maritime jurisdiction contained in the circular in question, and which was adopted before this Government was made acquainted with the nature of the instructions which it was proposed by Her Majesty's Government to issue, was used for the sake of brevity in expressing the interpretation which has been heretofore placed upon the 1st article of the Treaty of 1818 by this Government, and not with the expectation of renewing a controversial discussion upon the subject, which under present circumstances he would sincerely deprecate.

I have, &c.,

(Signed), HAMILTON FISH.

Edward L. Thornton, Esq., &c., &c., &c.

*Circular relating to Canadian In-shore Fisheries.*

TREASURY DEPARTMENT,

WASHINGTON, June 9th, 1870.

Sir,—In compliance with the request of the Secretary of State, you are hereby authorized and directed to inform all masters of fishing vessels, at the time of clearance

from your port, that the authorities of the Dominion of Canada have terminated the system of granting fishing licenses to foreign vessels, under which they have heretofore been permitted to fish within the maritime jurisdiction of the said Dominion, that is to say, within three marine miles of the shore thereof; and that all fishermen of the United States are prohibited from the use of such in-shore fisheries, except so far as stipulated in the first article of the treaty of October 20, 1818, between the United States and Great Britain, in virtue of which the fishermen of the United States have, in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Banque Islands; on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands; on the shores of the Magdalen Islands; and also on the coasts, bays, harbours, and creeks, from Mount Joly, which was, when the treaty was signed, on the southern coast of Labrador, to and through the straits of Belle Isle, and thence northwardly, indefinitely along the coast, without prejudice, however, to any exclusive rights of the Hudson's Bay Company; and have also liberty forever to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland, above described, and of the coast of Labrador, unless the same, or any portion thereof, be settled, in which case it is not lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground; and also, are admitted to enter any other bays or harbours, for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever, subject to such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges reserved to them as above expressed. Fishermen of the United States are bound to respect the British laws and regulations for the regulation and preservation of the fisheries to the same extent to which they are applicable to British or Canadian fishermen.

The Canadian law of the 22nd of May, 1868, 31 Victoria, Cap. 61, entitled "An Act respecting fishing by foreign vessels," and the Act assented to on the 12th of May, 1870, entitled "An Act to amend the Act respecting fishing by foreign vessels, among other things, enact, that any commissioned officer of Her Majesty's navy, serving on board of any vessel of Her Majesty's navy, cruising and being in the waters of Canada, for the purpose of affording protection to Her Majesty's subjects engaged in the fisheries, or any commissioned officer of Her Majesty's navy, fishery officer, or stipendiary magistrate, on board of any vessel belonging to or in the service of the Government of Canada, and employed in the service of protecting the fisheries, or any officer of the Customs of Canada, sheriff, magistrate, or other person duly commissioned for that purpose, may go on board of any ship, vessel, or boat, within any harbour in Canada, or hovering (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbours in Canada, and stay on board so long as she may remain within such place or distance; and that any one of such officers or persons as are above mentioned may bring any ship, vessel, or boat, being within any harbor in Canada or hovering (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbours in Canada, into port, and search her cargo, and may also examine the master upon oath, touching the cargo and voyage; and if the master or person in command shall not truly answer the questions put to him in such examination, he shall forfeit four hundred dollars; and if such ship, vessel, or boat, be foreign, or not navigated according to the laws of the United Kingdom, or of Canada, and has been found fishing or preparing to fish, or to have been fishing (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbours of Canada, not included within the above mentioned limits, without a license, or after the expiration of the period named in the last license granted to such ship, vessel, or boat, under the first section of this Act, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof, shall be forfeited. And that all goods, ships, vessels, and boats, and the tackle, rigging, apparel, furniture, stores, and cargo, liable to forfeiture under this Act, may be seized and secured by any officers or persons mentioned in the second section



of this Act. And every person opposing any officer or person in the execution of his duty under this Act, or aiding, or abetting any other person in any opposition, shall forfeit eight hundred dollars, and shall be guilty of a misdemeanor, and upon conviction be liable to imprisonment for a term not exceeding two years.

*It will be observed, that the warning formerly given is not required under the amended Act, but that vessels are liable to seizure without such warning.*

On the 8th of January, 1870, the Governor General of the Dominion of Canada, in Council, ordered that suitable sailing vessels, similar to the "La Canadienne," be chartered and equipped for the service of protecting the Canadian in-shore fisheries against illegal encroachments by foreigners, these vessels to be connected with the police force of Canada, and to form a marine branch of the same. It is understood that, by a change of the boundaries between Canada and Labrador, the Canadian Territory now includes Mount Joly and a portion of the shore to the east thereof, which in the treaty of 1818 was described as the southern coast of Labrador. This municipal change of boundary does not, however, interfere with the rights of American fishermen, as defined by the treaty, on that portion of what was the southern coast of Labrador, east of Mount Joly.

Very respectfully,

GEO. S. BOUTWELL,

Secretary of the Treasury.

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*The Governor General to the Secretary of State for the Colonies.*

(Copy.—No. 158.)

NIAGARA, July 6th, 1870.

1st June. MY LORD,—I have the honor to forward herewith for Your Lordship's information a copy of a despatch which I have received from Mr. Thornton, together with a copy of my reply.

2. The views of the Canadian Government on the point raised by Mr. Fish will be found in the Minute of the Privy Council of the Dominion, of which a copy is also enclosed.

The special instructions (dated 14th May) which govern Canadian officers engaged in the fisheries protection service, seem to comply with the latter branch of the alternative suggested by Mr. Fish, and to leave no room for doubt that the United States fishermen are secured from interference while in the exercise of the liberty guaranteed to them by the treaty of 1818, to fish along the coast east of Mount Joly.

I have, &c.,

(Signed,)

JOHN YOUNG.

The Earl Granville, &c., &c., &c.

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*The Secretary of State for the Colonies to the Governor General.*

(Copy.—CANADA.—No. 214.)

DOWNING STREET, 6th August, 1870.

SIR,—I have received your despatch, No. 158, of 6th July, enclosing a correspondence with Mr. Thornton on the subject of the objections taken by Mr. Fish to the wording of the Canadian Order in Council of 8th of January last, relating to the Fisheries on the coast of Labrador, and a Minute of the Privy Council of the Dominion, embodying their views on the point raised by Mr. Fish;

As the point contended for by the United States Government seems to be practically admitted, it does not appear to me necessary to discuss the question any further.

I have, &c.,

(Signed,)

KIMBERLEY.

Governor General,

The Right Honorable Sir John Young, Baronet,  
G. C. B., G. C. M. G.

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*Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council on the 3rd May, 1870.*

The Committee of Council have had under consideration the draft submitted by the Honorable the Minister of Marine and Fisheries of "Special instructions to fishing officers *ex officio* magistrates in command of Government vessels engaged as marine police in "protecting the in-shore fisheries of Canada," and they respectfully advise that the same be approved and adopted.

Certified.

(Signed,)

WM. H. LEE,  
Clerk of Privy Council.

To the Honorable

The Minister of Marine and Fisheries.

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*Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council on the 14th May, 1870.*

On a memorandum dated 14th May, 1870, from the Honorable the Minister of Marine and Fisheries, submitting the draft of special instructions to fishery officers *ex officio* magistrates in command of Government vessels engaged as marine police in protecting the in-shore fisheries of Canada, and recommending that the same be approved by Your Excellency and supersede those adopted by order in Council of the 3rd instant.

The Committee advise that the draft submitted be approved and adopted, and that the order in Council of the 3rd instant be cancelled.

Certified.

(Signed,)

WM. H. LEE,  
Clerk of Privy Council.

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(DOMINION OF CANADA.)

*Special instructions to Fishery Officers, ex-officio Magistrates, in command of Government vessels engaged as Marine Police in protecting the In-shore Fisheries of Canada.*

DEPARTMENT OF MARINE AND FISHERIES, FISHERIES BRANCH,  
OTTAWA, May 14, 1870.

SIR,—The service to which you are appointed is a special and peculiar one; and the exercise on your part of the greatest possible discretion and judgment is required.

The following directions, for your information and guidance, are of a confidential nature.

The DUTIES you will perform, and the POWERS you shall exercise, are defined by the present instructions.



**DUTIES.**—It will be your duty to cruise, at all times, with the vessel under your command on the various "Stations" to which, from time to time, you may be assigned ; and to prevent foreign fishermen and fishing vessels from intruding on the inshore fisheries and fishing grounds of Canada, either to take or cure fish, or to procure bait for fishing.

Probably, American fishing vessels and fishermen chiefly will be concerned ; therefore it is requisite for you to be more especially informed of the relation of United States citizens to fishery privileges in British waters, as well those of a common and concurrent nature as those of an exclusively Canadian character. Also, to be instructed to what extent, and for what (other than fishing) purposes American fishing vessels and fishermen are permitted free access to the bays and harbors of the Dominion.

The terms of the First Article of the Convention of the 20th October, 1818, between Great Britain and the United States, has, since the expiration of the Reciprocity Treaty, governed the participation of American fishermen in the Gulf and Labrador fisheries. A copy of the said article is appended.

1. United States fishermen may exercise the liberty of fishing in common with British subjects along that part of the coast of Canada extending from Mount Joly, near the River Grande Natashquan, to the easterly limit of Canada, at Blanc Sablon Bay, and around the Magdalen Islands ; and enjoy freedom also to land and cure fish on certain of the unsettled shores of the Labrador coast. Wherever any settlement exists within these limits, the privilege of landing and curing fish may be enjoyed by previous agreement with the settlers, or with proprietors of the ground.

2. In all other parts foreigners are precluded from fishing within three marine miles of Canadian shores. American vessels may, however, enter into all bays and harbors for certain specified purposes.

These purposes are—for shelter, repairing damages, purchasing wood, and obtaining water. They are to be admitted for no other purpose whatever. And during such admission they may be subjected to any restrictions necessary to prevent them from taking, drying, or curing fish therein, or in any other manner abusing the privileges thus accorded to them. You will be careful to observe that such qualified admission to the ports and harbors of Canada be not made a pretext or cloak for transferring cargoes, or transacting any other business connected with their fishing operations.

With regard to the Magdalen Islands, although the liberty to land, and to dry, and to cure fish there, is not expressly given by the terms of the Convention to United States fishermen, it is not at present intended to exclude them ; nor is it desirable to impose a narrow construction on the term "unsettled." Places containing a few isolated houses might not, in some instances, be susceptible of being considered as "settled" within the meaning and purpose of the Convention. Something would, however, depend upon the facts of the situation, and the circumstances of the settlement. Private and proprietary rights form an element in the consideration of this point. The generally conciliatory spirit in which it is desirable that you should carry out these instructions, and the desire of Her Majesty's Government that rights of exclusion should not be strained, must influence you in making as fair and liberal an application of the term as shall consist with the just claims of all parties.

Should interference with the pursuits of British fishermen, or the property of Canadians, appear to be inseparable from the exercise of such indulgence, you will withhold it, and insist upon entire exclusion.

Americans, when so admitted, should be made aware that—in addition to being obliged in common with those subjects of Her Majesty with whom they exercise concurrent privileges of fishing in Colonial waters, to obey the laws of the country, and particularly such Acts and regulations as exist to ensure the peaceable and profitable enjoyment of the fisheries by all persons entitled thereto—they are peculiarly bound to observe peace and order in the quasi settled places to which, by the liberal disposition of Canadian authorities, they may be admitted.

Wheresoever foreigners may fish in Canadian waters, you will compel them to observe

the Fishery Laws. Particular attention should be directed to the injury which results from cleaning fish on board of their vessels while afloat, and throwing overboard the offals, thus fouling the fishing, feeding and breeding grounds. The *Fisheries Act* (Sec. 14) provides a heavy penalty for this offence.

Take occasion to enquire into and report upon any modes of fishing, or any practices adopted by foreign fishermen which appear to be injurious to the fisheries.

Copies of the Fishery Laws of Canada accompany the present instructions.

**POWERS.**—The capacity in which you are vested with magisterial powers is that of Fishery Officer for the Provinces forming the Dominion of Canada. Your power and authority as a Fishery Officer are derived from the following Statutes : “ *The Fisheries Act* ” (31 Vict., cap. 60) ;

“ *An Act respecting Fishing by Foreign Vessels* ” (31 Vict. cap. 61) and the subsequent Statute, entitled “ *An Act to amend the Act respecting Fishing by Foreign Vessels* ” made and passed in the present Session of the Parliament of Canada ;

“ *Chapter 94 of the Revised Statutes* (third series) of *Nova Scotia* ” Of the Coast and Deep-sea fisheries) ;

The Act entitled “ *An Act to amend cap. 94 of the Revised Statutes of Nova Scotia,* ” (29 Vict., cap 35) ;

An Act passed by the Legislature of the Province of New Brunswick, entitled “ *An Act relating to the Coast Fisheries, and for the Prevention of Illicit Trade* ” (16 Vict., cap. 69) ;

Also from such Regulations as have been passed or may be passed by the Governor General in Council, or from Instructions from the Department of Marine and Fisheries, under *The Fisheries Act* hereinbefore cited.

In such capacity, your jurisdiction must be strictly confined within the limit of “ three “ marine miles of any of the coasts, bays, creeks or harbors,” of Canada, with respect to any action you may take against American fishing vessels and United States citizens engaged in fishing. Where any of the bays, creeks, or harbors shall not exceed ten geographical miles in width, you will consider that the line of demarcation extends from headland to headland, either at the entrance to such bay, creek or harbor, or from and between given points on both sides thereof, at any place nearest the mouth where the shores are less than ten miles apart ; and may exclude foreign fishermen and fishing vessels therefrom, or seize if found within three marine miles of the coast.

Should you have occasion to compel any American fishing vessels or fishermen to conform to the requirements of the *Fisheries Act and Regulations* as regards the modes and incidents of fishing, at those places to which they are admitted under the Convention of 1818,—particularly in relation to ballast, fish offals, setting of nets, and hauling of seines, and use of “ trawls,” or “ bultows,” more especially at and around the Magdalen Islands,—your power and authority over such cases will be similar to that of any other Fishery Officer appointed to enforce the Fishery Laws in Canadian waters. (*Vide Fisheries Act.*)

Certain portions of the foregoing Acts relate to the prevention of illicit trade. Instructions will therefore, be given you by the Customs Department, authorizing you to act as an Officer of Customs : and it will form part of your duty to see that the Laws and Regulations affecting Revenue, are duly observed. In your capacity of a Customs Officer, you cannot receive any aid from Her Majesty's vessels to enforce authority under the Customs Laws.

**JURISDICTION.**—The limits within which you will, if necessary, exercise the power to exclude United States fishermen, or to detain American fishing vessels or boats, are for the present to be exceptional. Difficulties have arisen in former times with respect to the question, whether the exclusive limits should be measured on lines drawn parallel everywhere to the coast and describing its sinuosities, or on lines produced from headland to headland across the entrances of bays, creeks or harbors. Her Majesty's Government are clearly of opinion, that by the Convention of 1818, the United States have renounced the right of fishing not only within three miles of the Colonial shores, but within three miles of a line drawn across the mouth of any British bay or creek. It is, however, the wish of Her Majesty's Government neither to concede, nor for the present to enforce any rights



in this respect, which are in their nature open to any serious question. Until further instructed, therefore, you will not interfere with any American fishermen unless found within three miles of the shore, or within three miles of a line drawn across the mouth of a bay or creek which is less than ten geographical miles in width. In the case of any other bay, as Bay de Chaleurs, for example, you will not admit any United States fishing vessel or boat, or any American fishermen, inside of a line drawn across at that part of such bay where its width does not exceed ten miles.

**ACTION.**—You will accost every United States vessel or boat actually within three marine miles of the shore, along any other part of the coast except Labrador and around the Magdalen Islands, or within three marine miles of the entrance of any bay, harbor or creek, which is less than ten geographical miles in width, or inside of a line drawn across any part of such bay, harbor or creek, at points nearest to the mouth thereof, not wider apart than ten geographical miles, and if either fishing, preparing to fish, or having obviously fished within the exclusive limits, you will, in accordance with the above recited Acts, seize at once any vessel detected in violating the law, and send or take her into port for condemnation. It must be evident and susceptible of the clearest proof that the offence has been committed, and the capture effected within the prohibited limits.

Copies of the former and of the latter Acts, are furnished herewith for your use and distribution.

These Acts of Parliament subject to summary seizure and to forfeiture any foreign ship, vessel or boat which is found fishing, or having fished, or preparing to fish within the prohibited limits, and provide for carrying out the seizure and forfeiture.

Compulsory means may be employed; but resort to force will be justified only after every other prudent effort has failed.

**DIRECTIONS.**—If, from threatened resistance and obvious determination to contest the seizure, and because of the relative inadequacy of your own force, you shall believe any attempt at capture liable to be frustrated, you will warn the parties of the futility of resistance, and that you are authorised to procure the assistance, if needed, of any of Her Majesty's cruisers. In case of need, you must signal for, or otherwise procure the immediate aid of one of Her Majesty's ships, or of some other of the Canadian Government vessels belonging to the Marine Police. With both the first and last mentioned you will co-operate in all things pertaining to the protection of the fisheries.

If a foreign ship, vessel, or boat be found violating the Convention, or resisting consequent seizure, and momentarily effects her escape from the vicinity, she remains always liable to seizure and detention, if met by yourself in Canadian waters, and in British waters everywhere if brought to account by Her Majesty's cruisers. But great care must be taken to make certain of the identity of any offending vessel to be so dealt with.

All vessels seized must be placed as soon as convenient in the custody of the nearest Customs Collector; and information, with a statement of the facts, and the depositions of your sailing master, clerk, lieutenant or mate, and of two at least of the most respectable of your crew, be despatched with all possible diligence to the Government. Be careful to describe the exact locality where the unlawful fishing took place, and the ship, vessel, or boat was seized. Also corroborate the bearings taken, by soundings, and by buoying the place (if possible) with a view to actual measurement, and make such incidental reference to conspicuous points and land marks as shall place beyond doubt the illegal position of the seized ship, vessel or boat. Omit no endeavour or precaution to establish on the spot that the trespass was or is being committed within three miles of land.

As it may be possible that any foreign fishing craft has been carried within the headland lines and into Canadian waters, by violent or contrary winds, by strong tides, through misadventure, or any other cause independent of the will of the master and the crew, you will consider these circumstances, and satisfy yourself with regard thereto before taking the extreme step of seizing and detaining any vessel.

On capture it will be desirable to take part of the foreign crew aboard the vessel

under your command, and place some of your own crew, as a measure of precaution, on board the seized vessel; first lowering the foreign flag borne at the time of capture. If your ordinary complement of men does not admit of this being done, or if because of several seizures the number of your hands might be too much reduced, you will endeavour to engage a few trustworthy men to supply any such emergency. The portion of foreign crew taken on board the Government vessel, you will land at the nearest place where a Consul of the United States is situated, or where the readiest conveyance to any American Consulate in Canada, or the other British Provinces, may be reached, and leave them there.

When any of Her Majesty's vessels, about the fishing stations, or in port, shall be met with, you should, if circumstances permit, go on board and confer with the Naval Commander, and receive any suggestions he may feel disposed to give, which do not conflict with these instructions, and afford him any information you may possess about the movements of foreign craft, also inform him what vessels you have accosted, and where.

Do not fail to make a full entry of all circumstances connected with foreign vessels, noting their names, tonnage, ownership, crew, port, place of fishing, cargo, voyage, and destination, and (if ascertainable) their catch. Report your proceedings as often as possible, and keep the Department fully advised on every opportunity where instructions would most probably reach you at stated intervals.

The service in which you are engaged will be subject to the general direction and control of the chief officer, or master in command, Captain P. A. Scott, R.N., on board the Government steamer *Lady Head* (in the case of the schooners *Stella Maria* and *La Canadienne*, this general control is vested in Napoleon Lavoie, Esq.), whose orders and arrangements you will conform to in every respect. He is advised to consult and to act in conjunction with the British Admiral and Naval Officers commanding Her Majesty's ships.

The precise limits of the station on which you are to cruise, and the further details of your duties, will be described in the directions you will receive as above.

Considerable inconvenience is caused by Canadian fishing vessels, and those belonging to Prince Edward Island, neglecting to show their colors. You will draw the attention of masters to this fact, and request them to hoist their colors without requiring to be hailed and boarded.

It cannot be too strongly impressed upon you, nor too carefully enjoined on the officers and crew under your command, that the present service should be performed in a spirit of forbearance and moderation.

The Government relies on your prudence, discretion, and firmness in the performance of the special duties thus entrusted to you.

I have the honor to be, Sir,

Your obedient Servant,

P. MITCHELL,

Minister of Marine and Fisheries.

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#### (APPENDIX A.)

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#### *Article I. of Convention between His Britannic Majesty and the United States of America Signed at London, October 20, 1818.*

Article I. WHEREAS, differences have arisen respecting the liberty claimed by the United States, for the inhabitants thereof to take, dry, and cure fish, on certain coasts, bays, harbors, and creeks, of His Britannic Majesty's dominions in America, it is agreed between the High Contracting Parties that the inhabitants of the said United States shall have, for ever, in common with the subjects of His Britannic Majesty, the liberty to take



fish of every kind on that part of the southern coast of Newfoundland, which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company. And that the American fishermen shall also have liberty, for ever, to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce, for ever, any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America, not included within the above-mentioned limits; Provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.

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*The Secretary of State to the Governor General.*

(Copy—Canada—93.)

DOWNING STREET, 30th April, 1870.

SIR,—I have the honor to transmit to you the copy of a letter which I have caused to be addressed to the Admiralty, respecting the instructions to be given to the Officers of Her Majesty's ships employed in the protection of the Canadian fisheries.

Her Majesty's Government do not doubt that your Ministers will agree with them as to the propriety of these instructions, and will give corresponding instructions to the vessels employed by them.

I have, &c.,  
(Signed,)

GRANVILLE.

General Governor,

The Right Hon. Sir John Young, Bart., G.C.B., &c.

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*Sir F. Rogers to the Secretary to the Admiralty.*

(Copy.)

DOWNING STREET, 30th April, 1870.

SIR,—In Mr. Secretary Cardwell's letter to the Lords Commissioners of the Admiralty of the 12th April, 1866, it was stated that American vessels should not be seized for violating the Canadian Fishing Law "except after wilful and persevering neglect of the warnings which they may have received; and in case it should become necessary to proceed to forfeiture, cases should, if possible, be selected for that extreme step in which the offence of fishing has been committed within three miles of land."

The Canadian Government has recently determined, with the concurrence of Her Majesty's Ministers, to increase the stringency of the existing practice by dispensing with the warnings hitherto given, and seizing at once any vessel detected in violating the law.

In view of this change, and of the questions to which it may give rise, I am directed by Lord Granville to request that you will move their Lordships to instruct the officers of Her Majesty's ships employed in the protection of the fisheries, that they are not to seize any vessel unless it is evident, and can be clearly proved, that the offence of fishing has been committed, and the vessel itself is captured within three miles of land.

I am, &c.,

(Signed,)

F. ROGERS.

The Secretary to the Admiralty.

(Copy).

DEPARTMENT OF MARINE AND FISHERIES,

OTTAWA, 31st May, 1870.

Having reference to a despatch of the 30th ultimo, from the Secretary of State for the Colonies, covering a communication of the same date from Sir Frederick Rogers to the Secretary of the Admiralty, directing attention to instructions given to Officers of Her Majesty's ships employed in the protection of the fisheries of Canada, and desiring the Canadian Government to give corresponding directions to Officers in command of the Marine Police vessels similarly engaged, the undersigned has the honor to submit that in certain respects Lord Granville's wish has been already provided for in the Special Instructions adopted by the Governor General in Council, on the 14th instant.

The Officers of Her Majesty's ships, are, it is said, instructed "not to seize any vessel unless it is evident, and can be clearly proved, that the offence of fishing has been committed, and the vessel itself is captured within three miles of land."

Attention is respectfully requested to a division of the instructions issued by the Government of Canada, headed "Action," by which it will be seen that exercise of the lawful power of peremptory and absolute detention is not contemplated on the first occasion, unless there be a wilful and persistent violation of the law; but such preliminary forbearance could not possibly be extended to any subsequent act of trespass.

Another division of these instructions, headed "Directions," provides with great care against the possibility of any offending vessel being seized by the Canadian Officers, except actually within three miles of land, and unless the commission of the offence can be clearly proved. It is, however, intimated under the same head, that any offending vessel which may resist or avoid immediate seizure within three miles of land, remains liable to capture, for the offence committed, by Canadian officers in the waters of Canada, and by Imperial cruisers, wherever she may be found in British waters. And, in consequence, the Canadian Officers are directed to communicate without delay the names of any vessels they shall have notified and accosted, or any which may escape or resist seizures. This proviso is consonant to the Acts relative to fishing by foreign vessels, as besides the offence of being "found fishing" it is unlawful to "have been fishing, &c." *Vide* 31 Vic., cap. 61, sec. 1, and amending Act.

The undersigned begs to express the hope that the instructions suggested in Lord Granville's despatch to the Admiralty, may not be interpreted so as to affect such liability.

It is also understood that the terms "offence of fishing has been committed" occurring in the Admiralty instructions to which the assent of the Canadian Government is invited, are to be construed conformably with the fishery laws, as under these statutes, preparing to fish inshore constitutes an offence.

The undersigned would respectfully observe, that while recommending acquiescence in so much of His Lordship's suggestion as consists with these Special Instructions, it is advisable to guard against any further practical modification of the strict right of entire exclusion, and also of summary action, than what has been already provided for in the very considerate instructions issued by the Canadian Government. There should, as far as it is possible, be uniformity of procedure in these particulars between Her Majesty's ships and the subsidiary force employed by Canada.



With reference, however, to that part of Lord Granville's suggestion affecting the order to capture any foreign vessel liable to seizure, only when the ship is actually within three miles of the coast, the undersigned considers it open to serious objections.

Both the Imperial and Colonial statutes regulating fishing by foreign vessels relate to jurisdiction "in British waters." The system applied under them recognizes certain conventional limits as the basis of actual exclusion. But it would seem to be inconsistent, both with the provisions of those acts, and the object of defence, to admit of offending vessels avoiding all penal consequences of their trespass by simply passing an imaginary line out of Colonial bounds, and yet being still within British jurisdiction, after having violated the provincial laws, and infringed the Treaty between Great Britain and the United States, and also the Imperial Act founded on the same. The peculiar facility with which foreign vessels may cross and re-cross along this marine limit, renders it possible that, under shelter of the exemption resulting from any instruction of the nature suggested, trespassers may present the anomaly of escaping from the Marine Police of Canada, to the quasi-protection of Imperial authority. The existence of such a rule must really invite illegal encroachments on the part of foreigners, and the immediate effect will be to encourage intruders to quicken their efforts to avoid detection and evade seizure, knowing that the capture of their vessels is certain only when caught, as it were, in the very act of trespass. It will certainly weaken the moral influence of any demand made by the officers in command of the Canadian vessels, depending, as they are instructed to do, on the material aid of Her Majesty's ships in case of violence, they being themselves unauthorised to fire upon and disable any vessel either offering resistance, or endeavouring to escape seizure.

There is also to be considered the probable future reference to this exception in connection with any final settlement of the reserved question of headland lines. If, for instance, any foreign vessel having actually trespassed within three miles of the shore of the interior of the Bay des Chaleurs, and escaped from the municipal force of Canada, shall not be afterwards subject to seizure under British authority anywhere within the entrance to that bay,—say inside of a line drawn across from Miscou to Point Maquereau (distant apart about fifteen miles),—and where in all other matters, of a civil or criminal nature, Canada exercises provincial jurisdiction; it may simply waive of both Canadian and British control, *quo ad* exclusive rights of fishery. The Government having deliberated on and determined to maintain this essential point by several Orders in Council adopted since 1864, it is inadvisable to sanction any such dubious proceedings as might be in future pressed into service to support American views. Occasion is taken to refer to reports from this Department, dated 15th and 20th December last, in which this disputed part of the fishery question is referred to at length, and other previous reports enumerated; and the undersigned begs leave again to urge that Her Majesty's Government may be requested to bring it to a speedy settlement in the manner proposed by Lord Clarendon in 1866, on the suggestion of the American Minister at London.

The undersigned would respectfully, but most earnestly represent the tendency of any restriction of the kind proposed by Lord Granville, on the support of Her Majesty's squadron, to mar the efficiency of this important service, and begs leave to recommend that Her Majesty's Government may be asked to instruct the Commanding Officer to receive and act upon whatever definite and reliable reports (with satisfactory particulars) of actual detection or escape, may be made by the Officers in command of the Canadian Government vessels employed in protecting the in-shore fisheries of Canada.

The whole, nevertheless, respectfully submitted.

(Signed,)

P. MITCHELL.

Minister of Marine and Fisheries.

*Amending Special Instructions to Fishery Officers re Foreign Fishing Vessels.*

OTTAWA, 8th June, 1870.

With reference to Vice-Admiral Wellesley's despatch of the 30th ultimo, the undersigned has the honor to recommend that the Special Instructions to Officers commanding Marine Police vessels, approved by Council on the 11th ultimo, be amended as follows :—

Under the head "Action" at paragraph 1 (p. 5), all the words after "you will" in the eleventh line, down to the end of the next succeeding paragraph (at the words "present season"), be omitted, and the words following be adopted in their stead :—"In accordance with the above recited Acts, seize at once any vessel detected in violating the law, and send or take her into port for condemnation. It must be evident, and susceptible of the clearest proof, that the offence has been committed, and the capture effected within the prohibited limits."

The whole respectfully submitted.

(Signed,)

P. MITCHELL,  
Minister of Marine and Fisheries.

*Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council on the 8th June, 1870.*

The Committee have had under consideration the Despatch dated 30th May, ultimo, from Vice-Admiral Wellesley, with reference to the special instructions given to Commanders of Canadian cruisers engaged in the protection of the fisheries.

The Honorable the Minister of Marine and Fisheries recommends that the Special Instructions to Officers commanding marine police vessels, approved in Council on the 14th ult., be amended as follows :—

"Under the head 'action,' at par. 1 (p. 5), all the words after 'you will' in the eleventh line down to the end of the next succeeding paragraph (at the words 'present season') be omitted, and the words following be adopted in their stead :—

"In accordance with the above recited Acts, seize at once any vessel detected in violating the law, and send or take her into port for condemnation. It must be evident and susceptible of the clearest proof that the offence has been committed and the capture effected within the prohibited limits."

Certified.

(Signed,)

WM. H. LEE,  
Clerk Privy Council.

*The Governor General to the Secretary of State for the Colonies.*

(Copy—No. 133.)

OTTAWA, June 9th, 1870.

MY LORD,—I have the honor to state that I received a Despatch, of date the 30th May, from Vice-Admiral Wellesley enclosing a copy of revised instructions to the Officers commanding Her Majesty's ships, which were framed in accordance with the orders received from the Admiralty. This despatch and the instructions were submitted in due course for the consideration of the Council, and in order to make the instructions given to the Commanders of the police vessels engaged in the protection of the in-shore fisheries assimilate with those given to the Officers commanding Her Majesty's ships, the Minister of Marine and Fisheries recommended, and the Committee of Council sanctioned, the alteration introduced under the head "action," at paragraph 1, page 5 of the instructions.



I have communicated a copy of the instruction so altered to Vice-Admiral Wellesley for his information.

(Signed,)

JOHN YOUNG.

Earl Granville, &c., &c., &c.

*Lord Granville to Governor General.*

(Copy of Cable Telegram.)

Received in OTTAWA, June 6th. 1870.

*From the Colonial Office.*

Her Majesty's Government hopes that the United States fishermen will not be for the present prevented from fishing except within three miles of land or in bays which are less than six miles broad at the mouth.

(Signed,)

GRANVILLE.

*On Lord Granville's Telegram re-definition of British Bays in Canada.*

(Copy.)

OTTAWA, 7th June, 1870.

Having reference to Lord Granville's telegraphic despatch of yesterday, referred to the undersigned for report, he begs leave to state, as mentioned in reply to a previous telegram from the Colonial Secretary, that precautions have been already taken against seizure by Canadian Officers of United States fishing vessels outside of three marine miles from land on the coasts of Canada.

The further hope is expressed by Her Majesty's Government that American fishermen will not be, for the present, prevented from fishing in bays which are less than six miles broad at the mouths. The undersigned respectfully draws attention to the extremely objectionable nature of this proposal. The termination of the Reciprocity Treaty by the United States, and the consequent cessation of the labors of the Joint Commissioners embracing disputed points in the controversy suspended thereby, had the legitimate effect of leaving the in-shore fishery rights just as they stood in 1854. The main point formerly in dispute, involving the definition of bays, &c., has never since been conceded by the Imperial or Colonial authorities. It, on the contrary, has been steadily asserted in all subsequent correspondence and transactions. The letter of the Secretary of State for the Colonies, dated 12th April, 1866, expressly reserves it, and sets forth the opinion of Her Majesty's Government as clear on this point. The Canadian Government was, however, desired to forego "for the present" the strict enforcement of British rights in this respect, and "during the (then) present season," to accept a conventional arrangement affecting bays or creeks less than ten miles wide at their entrances. It was so accepted as part of the temporary system at that time proposed, but has shared with kindred provisions the disapproval repeated on various occasions by this Government during four years past. The policy adopted this year by Canada, and approved by Great Britain, would in its entirety supersede all provisional concessions heretofore subsisting. But in deference to the obvious wishes of Her Majesty's Government, this policy has been carried out in the spirit of Mr. Cardwell's Despatch of 12th April, 1866; and the same conventional limit of ten miles will be again for the present observed. The Government of Canada ought not, therefore, to be now desired to recognise any further and fresh limitation of our exclusive rights, however temporary and guarded it may be intended to be made.

This disputed matter has now been pending for upwards of twenty-five years, during which period the American Government has had frequent opportunities, and has been specially invited to join in an equitable adjustment of the same. The fault that it is still

unsettled and the source of difficulty attaches to the United States Government alone. Great Britain and Canada are mere defendants, as in possession of a national right, existing in fact and in law.

The Council is aware that, when the British Government in 1845 opened the Bay of Fundy to American fishermen, as an amicable relaxation of treaty rights, the act was officially regarded as "a practical abandonment" by American authorities of the British construction of the Convention of 1818. It was immediately followed by a demand for general application to all indents exceeding "six miles" in width. This extraordinary demand appears to have been for the moment acquiesced in by Lord Aberdeen, for peace sake, but was soon afterwards rejected by Lord Stanley on the earnest remonstrances of the Colonies. Another concession in the same direction, as proposed by Lord Granville (identical in the words of that ineffectual and unjust claim), may be similarly construed to our detriment. Thus the whole policy of exclusion would be gradually subverted, and component parts of a question vital to the future welfare and interests of Canada become practically abandoned piece-meal.

The peculiar concession now suggested, would, it is believed, tend to create new differences with the United States instead of promoting any final settlement of the existing controversy.

Reference is particularly requested to Reports of the 15th and 20th of December last, in which the whole matter in question is fully set forth. The conclusions arrived at were,—that, as the American Government had voluntarily terminated the Treaty of 1854, and ever since failed to consider any propositions regarding an equivalent for the use of our own in-shore fisheries, notwithstanding an intermediate licence system which continued to United States citizens the same fishery privileges they had enjoyed under the Reciprocity Treaty, on merely formal conditions, all such concessions should be absolutely withdrawn and our rights duly enforced as they existed and were upheld anterior to that reciprocal compact.

The undersigned, therefore, respectfully submits that the terms of the policy already adopted—and now in actual course of being carried out—should be strictly adhered to.

The whole respectfully submitted.

(Signed,) P. MITCHELL,  
Minister of Marine and Fisheries.

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*Lord Granville to the Governor General.*

DOWNING STREET, 6th June, 1870.

\* \* \* \* \*

(*Extract.*)

Her Majesty's Government are fully aware that no step should be taken which should prejudice the question—What are Canadian waters? or should admit the right of United States fishermen to fish within those waters except within the limits prescribed by the Convention of 1818.

But they do not abandon the hope that the question of abstract right may yet be avoided by some arrangement between Canada and the United States, or that the limits may be definitely settled by arbitration or otherwise, and while any expectation of this kind exists they desire to avoid all occasion of dispute, so far as this is possible, consistently with the substantial protection of the Canadian Fisheries. With these objects they think it advisable that United States fishermen should not be excluded from any waters except within three miles of the shore, or in the unusual case of a bay which is less than six miles wide at its mouth but spreads to a greater width within. It will of course be



understood and explained to the United States Government that this liberty is conceded temporarily and without prejudice to the right of Great Britain to fall back on her Treaty rights if the prospect of an arrangement lessens, or if the concession is found to interfere practically with the protection of the Canadian Fisheries,

I have the honor to be, Sir,

Your most obedient humble servant,

(Signed,) GRANVILLE.

*Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council, on the 9th June, 1870.*

The Committee of Council have had under consideration the telegraphic message from Earl Granville to Your Excellency of the 6th June inst., expressing the hopes of H. M. Government that the United States fishermen will not for the present be prevented from fishing except within three miles of land or in bays which are less than six miles broad at the mouth. They have also had before them the report dated 8th June, 1870, from the Honorable the Minister of Marine and Fisheries to whom the above mentioned despatch was referred, and they respectfully report their concurrence in the views expressed in the said report and submit that the same be communicated by Your Excellency to Lord Granville for the information of Her Majesty's Government.

Certified,

(Signed,)

W. H. LEE,  
Clerk to Privy Council.

To the Honorable

The Minister of Marine and Fisheries.

*Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council on the 7th July, 1870.*

The Committee have under consideration a report dated 27th June, 1870, from the Honorable the Minister of Marine and Fisheries, having reference to Lord Granville's despatch of the 8th June, 1870, wherein it is stated that in order to avoid all occasions of dispute so far as is consistent with the substantial protection of the Canadian Fisheries, it is advisable that United States fishermen should not be excluded from any waters except within three miles of shore, or in the unusual case of a bay which is less than six miles wide at its mouth, it being meanwhile explained to the United States Government that this liberty is only temporarily conceded, without in anywise being considered to prejudice the question as to what are Canadian waters, and without prejudice to the right of Great Britain to fall back on her treaty rights.

The Minister of Marine and Fisheries respectfully submits further amendments (hereto annexed) to the special instructions to Officers commanding Marine Police vessels, approved by order in Council of the 8th June, 1870.

The Committee submit above Report and the amendments to the special instructions to Officers commanding Marine Police vessels as suggested by the Honorable the Minister of Marine and Fisheries for Your Excellency's approval.

Certified,

(Signed,)

WM. H. LEE,  
Clerk Privy Council.

To the Honorable

The Minister of Marine and Fisheries, &c.

## (DOMINION OF CANADA.)

*Special Instructions to Fishery Officers, ex officio Magistrates, in command of Government Vessels engaged as Marine Police, in protecting the In-shore Fisheries of Canada.*

DEPARTMENT OF MARINE AND FISHERIES,  
FISHERIES BRANCH, Ottawa, June 27, 1870.

SIR,—The service to which you are appointed is a special and peculiar one : and the exercise on your part of the greatest possible discretion and judgment is required.

The following directions, for your information and guidance, are of a confidential nature.

The Duties you will perform, and the Powers you shall exercise, are defined by the present instructions.

*Duties.*—It will be your duty to cruise, at all times, with the vessel under your command on the various "Stations" to which, from time to time, you may be assigned ; and to prevent foreign fishermen and fishing vessels from intruding on the in-shore fisheries and fishing grounds of Canada, either to take or cure fish, or to procure bait for fishing.

Probably, American fishing vessels and fishermen chiefly will be concerned. Therefore, it is requisite for you to be more especially informed of the relation of United States citizens to fishery privileges in British waters, as well those of a common and concurrent nature as those of an exclusively Canadian character. Also, to be instructed to what extent, and for what (other than fishing) purposes American fishing vessels and fishermen are permitted free access to the bays and harbors of the Dominion.

The terms of the First Article of the Convention of the 20th October, 1818, between Great Britain and the United States, has, since the expiration of the Reciprocity Treaty, governed the participation of American fishermen in the Gulf and Labrador fisheries. A copy of the said Article is appended.

1. United States fishermen may exercise the liberty of fishing in common with British subjects along that part of the coast of Canada extending from Mount Joly, near the River Grande Natashquan, to the easterly limit of Canada, at Blanc Sablon Bay, and around the Magdalen Islands ; and enjoy freedom also to land, and cure fish on certain of the unsettled shores of the Labrador coast. Wherever any settlement exists within these limits, the privilege of landing and curing fish may be enjoyed by previous agreement with the settlers, or with proprietors of the ground.

2. In all other parts foreigners are precluded from fishing within three marine miles of Canadian shores. American vessels may, however, enter into all bays and harbors for certain specified purposes.

These purposes are :—for shelter, repairing damages, purchasing wood, and obtaining water. They are to be admitted for no other purpose whatever. And during such admission they may be subjected to any restrictions necessary to prevent them from taking, drying, or curing fish therein, or in any other manner abusing the privileges thus accorded to them. You will be careful to observe that such qualified admission to the ports and harbors of Canada, be not made a pretext or cloak for transferring cargoes, or transacting any other business connected with their fishing operations.

With regard to the Magdalen Islands, although the liberty to land, and to dry, and cure fish there, is not expressly given by the terms of the Convention to United States fishermen, it is not at present intended to exclude them ; nor is it desirable to impose a narrow construction on the term "unsettled." Places containing a few isolated houses might not, in some instances, be susceptible of being considered as "settled" within the meaning and purpose of the Convention. Something would, however, depend upon the facts of the situation, and the circumstances of the settlement. Private and proprietary rights form an element in the consideration of this point. The generally conciliatory spirit in which it is desirable that you should carry out these instructions, and the desire of Her Majesty's Government that rights of exclusion should not be strained, must in-



fluence you in making as fair and liberal an application of the term as shall consist with the just claims of all parties.

Should interference with the pursuits of British fishermen, or the property of Canadians, appear to be inseparable from the exercise of such indulgence, you will withhold it, and insist upon entire exclusion.

Americans, when so admitted, should be made aware that, in addition to being obliged in common with those subjects of Her Majesty with whom they exercise concurrent privileges of fishing in Colonial waters, to obey the laws of the country, and particularly such acts and regulations as exist to ensure the peaceable and profitable enjoyment of the fisheries by all persons entitled thereto, they are peculiarly bound to observe peace and order in the quasi settled places to which, by the liberal disposition of Canadian authorities, they may be admitted.

Wheresoever foreigners may fish in Canadian waters, you will compel them to observe the Fishery Laws. Particular attention should be directed to the injury which results from cleaning fish on board of their vessels while afloat, and throwing overboard the offals, thus fouling the fishing, feeding, and breeding grounds. The Fisheries Act (sect. 14) provides a heavy penalty for this offence.

Take occasion to enquire into and report upon any modes of fishing, or any practices adopted by foreign fishermen, which appear to be injurious to the fisheries.

Copies of the Fishery Laws of Canada accompany the present instructions.

*Powers.*—The capacity in which you are vested with magisterial powers is that of Fishery Officer for the Provinces forming the Dominion of Canada. Your power and authority as a Fishery Officer are derived from the following Statutes: "The Fisheries Act" (31 Vict., cap. 60);

"An Act respecting Fishing by Foreign Vessels" (31 Vict., cap. 61), and the subsequent statute, entitled "An Act to amend the Act respecting Fishing by Foreign Vessels," made and passed in the present Session of the Parliament of Canada;

"Chapter 94 of the Revised Statutes (third series) of Nova Scotia" (of the Coast and Deep Sea Fisheries);

The Act entitled "An Act to amend Cap. 94 of the Revised Statutes of Nova Scotia" (29 Vict., cap. 35);

An Act passed by the Legislature of the Province of New Brunswick, entitled "An Act relating to the Coast Fisheries, and for the Prevention of Illicit Trade" (16 Vict., cap. 69);

Also from such Regulations as have been passed or may be passed by the Governor General in Council, or from instructions from the Department of Marine and Fisheries, under "The Fisheries Act," hereinbefore cited.

In such capacity, your jurisdiction must be strictly confined within the limit of "three marine miles of any of the coasts, bays, creeks, or harbors," of Canada, with respect to any action you may take against American fishing vessels and United States citizens engaged in fishing. Where any of the bays, creeks, or harbors, shall not exceed six geographical miles in width, you will consider that the line of demarcation extends from headland to headland, either at the entrance to such bay, creek, or harbor, or from and between given points on both sides thereof, at any place nearest the mouth where the shores are less than six miles apart; and may exclude foreign fishermen and fishing vessels therefrom, or seize if found within three marine miles of the coast.

Should you have occasion to compel any American fishing vessels or fishermen to conform to the requirements of the "Fisheries Act and Regulations," as regards the modes and incidents of fishing, at those places to which they are admitted under the Convention of 1818, particularly in relation to ballast, fish offals, setting of nets, and hauling of seines, and use of "trawls," or "bultows," more especially at and around the Magdalen Islands, your power and authority over such cases will be similar to that of any other Fishery Officer appointed to enforce the Fishery Laws in Canadian waters. (Vide "Fisheries Act.")

Certain portions of the foregoing Acts relate to the prevention of illicit trade.

Instructions will, therefore, be given you by the Customs Department, authorizing you to act as an Officer of Customs: and it will form part of your duty to see that the Laws and Regulations affecting Revenue, are duly observed. In your capacity of a Customs Officer, you cannot receive any aid from Her Majesty's vessels to enforce authority under the Customs Laws.

*Jurisdiction.*—The limits within which you will, if necessary, exercise the power to exclude United States fishermen, or to detain American fishing vessels or boats, are for the present to be exceptional. Difficulties have arisen in former times with respect to the question, whether the exclusive limits should be measured on lines drawn parallel everywhere to the coast and describing its sinuosities, or on lines produced from headland to headland across the entrances of bays, creeks, or harbors. Her Majesty's Government are clearly of opinion, that by the convention of 1818, the United States have renounced the right of fishing not only within three miles of the Colonial shores, but within three miles of a line drawn across the mouth of any British bay or creek. It is, however, the wish of Her Majesty's Government neither to concede, nor for the present to enforce any rights in this respect which are in their nature open to any serious question. Until further instructed, therefore, you will not interfere with any American fishermen unless found within three miles of the shore, or within three miles of a line drawn across the mouth of a bay or creek which, though in parts more than six miles wide, is less than six geographical miles in width at its mouth. In the case of any other bay, as Bay des Chaleurs, for example, you will not interfere with any United States fishing vessel or boat, or any American fishermen, unless they are found within three miles of the shore.

*Action.*—You will accost every United States vessel or boat actually within three marine miles of the shore, along any other part of the coast except Labrador, and around the Magdalen Islands, or within three marine miles of the entrance of any bay, harbor, or creek, which is less than six geographical miles in width, or inside of a line drawn across any part of such bay, harbor, or creek, at points nearest to the mouth thereof, not wider apart than six geographical miles, and if either fishing, preparing to fish, or having obviously fished within the exclusive limits, you will, in accordance with the above recited Acts, seize at once any vessel detected in violating the law, and send or take her into port for condemnation; but you are not to do so *unless it is evident, and can be clearly proved, that the offence of fishing has been committed*, and that the vessel is captured within the prohibited limits.

Copies of the former and of the latter Acts are furnished herewith for your use and distribution.

These Acts of Parliament subject to summary seizure and to forfeiture any foreign ship, vessel, or boat, which is found fishing, or having fished, or preparing to fish, within the prohibited limits, and provide for carrying out the seizure and forfeiture.

Compulsory means may be employed; but resort to force will be justified only after every other prudent effort has failed.

*Directions.*—If, from threatened resistance and obvious determination to contest the seizure, and because of the relative inadequacy of your own force, you shall believe any attempt at capture liable to be frustrated, you will warn the parties of the futility of resistance, and that you are authorized to procure the assistance, if needed, of any of Her Majesty's cruisers. In case of need, you must signal for, or otherwise procure the immediate aid of one of Her Majesty's ships, or of some other of the Canadian Government vessels belonging to the Marine Police. With both the first, and last mentioned you will co-operate in all things pertaining to the protection of the fisheries.

If a foreign ship, vessel, or boat be found violating the Convention, or resisting consequent seizure, and momentarily effects her escape from the vicinity, she remains always liable to seizure and detention, if met by yourself in Canadian waters, and in British waters everywhere if brought to account by Her Majesty's cruisers. But great care must be taken to make certain of the identity of any offending vessel to be so dealt with.

All vessels seized must be placed as soon as convenient in the custody of the nearest



Customs Collector; and information, with a statement of the facts, and the depositions of your sailing master, clerk, lieutenant, or mate, and of two at least of the most respectable of your crew, be despatched with all possible diligence to the Government. Be careful to describe the exact locality where the unlawful fishing took place, and the ship, vessel, or boat, was seized. Also, corroborate the bearings taken, by soundings, and by buoying the place (if possible) with a view to actual measurement, and make such incidental reference to conspicuous points and land marks as shall place beyond doubt the illegal position of the seized ship, vessel, or boat. Omit no endeavour or precaution to establish on the spot that the trespass was or is being committed within three miles of land.

As it may be possible that any foreign fishing craft has been carried within the head-land lines and into Canadian waters, by violent or contrary winds, by strong tides, through misadventure, or any other cause independent of the will of the master and the crew, you will consider these circumstances, and satisfy yourself with regard thereto before taking the extreme step of seizing and detaining any vessel.

On capture it will be desirable to take part of the foreign crew aboard the vessel under your command, and place some of your own crew, as a measure of precaution, on board the seized vessel; first lowering the foreign flag borne at the time of capture. If your ordinary complement of men does not admit of this being done, or if because of several seizures the number of your hands might be too much reduced, you will endeavour to engage a few trustworthy men to supply any such emergency. The portion of foreign crew taken on board the Government vessel, you will land at the nearest place where a Consul of the United States is situated, or where the readiest conveyance to any American Consulate in Canada, or the other British Provinces, may be reached, and leave them there.

When any of Her Majesty's vessels, about the fishing stations, or in port shall be met with, you should, if circumstances permit, go on board and confer with the naval commander, and receive any suggestions he may feel disposed to give, which do not conflict with these instructions, and afford him any information you may possess about the movements of foreign craft, also inform him what vessels you have accosted, and where.

Do not fail to make a full entry of all circumstances connected with foreign vessels, noting their names, tonnage, ownership, crew, port, place of fishing, cargo, voyage, and destination, and (if ascertainable) their catch. Report your proceeding as often as possible, and keep the Department fully advised on every opportunity where instructions would most probably reach you at stated intervals.

The service in which you are engaged will be subject to the general direction and control of the chief officer, or master in command, Captain P. A. Scott, R.N., on board the Government steamer *Lady Head*, (in the case of the schooners *Stella Maria* and *La Canadienne*, this general control is vested in Napoleon Lavoie, Esq.), whose orders and arrangements you will conform to in every respect. He is advised to consult and to act in conjunction with the British Admiral and Naval Officers commanding Her Majesty's ships.

The precise limits of the station on which you are to cruise, and the further details of your duties, will be described in the directions you will receive as above.

Considerable inconvenience is caused by Canadian fishing vessels, and those belonging to Prince Edward Island, neglecting to show their colors. You will draw the attention of masters to this fact, and request them to hoist their colors without requiring to be hailed and boarded.

It cannot be too strongly impressed upon you, nor too carefully enjoined on the officers and crew under your command, that the present service should be performed in a spirit of forbearance and moderation.

The Government relies on your prudence, discretion, and firmness in the performance of the special duties thus entrusted to you.

I have the honor to be, Sir,

Your obedient servant,

P. MITCHELL,

Minister of Marine and Fisheries.

## (APPENDIX A.)

*Article I. of Convention between His Britannic Majesty and the United States of America,  
Signed at London, October 20, 1818.*

Article I. WHEREAS, differences have arisen respecting the liberty claimed by the United States, for the inhabitants thereof to take, dry, and cure fish, on certain coasts, bays, harbors, and creeks, of His Britannic Majesty's dominions in America, it is agreed between the High Contracting Parties that the inhabitants of the said United States shall have, for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland, which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbors and creeks from Mount Jolly, on the Southern coast of Labrador, to and through the straits of Belisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company. And that the American fishermen shall also have liberty, for ever, to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador; but as soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce, for ever, any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America, not included within the above-mentioned limits; Provided however, that the American fishermen shall be admitted to enter such bays or harbors, for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.

*Copy of a Report of a Committee of the Honorable the Privy Council, approved by  
His Excellency the Governor General in Council on the 7th July, 1870.*

The Committee of Council have had under their careful consideration the despatch from the Right Hon. the Secretary of State for the Colonies, dated 6th June, 1870, having reference to the instructions given to British and Canadian vessels for the protection of the Colonial office of 30th April last, extending the privileges of American fishermen with respect to the fishery limits, &c., and restricting the right of seizing foreign vessels actually taken within three miles of the shore, or within a bay not less than six miles wide.

They have also had before them the Report dated 4th July, 1870, from the Hon. the Minister of Marine and Fisheries on the said despatch, and they respectfully submit their entire concurrence in the views and recommendations set forth in the said Report and advise that a copy be transmitted by Your Excellency to Earl Granville for the information of Her Majesty's Government.

Certified.

(Signed),

WM. H. LEE,  
Clerk Privy Council.

To the Honorable

The Minister of Marine and Fisheries, &c., &c., &c.



*The Governor General to the Secretary of State for the Colonies.*

(Copy—No. 165.)

NIAGARA, July 9th 1870.

MY LORD,—As I had the honour to state on the 23rd June (No. 140) I forwarded your Despatch, No. 138, of the 6th June immediately upon receipt, to the Council of Ministers for their consideration and guidance.

I pointed out at the same time that, in order to comply with your instructions, it was indispensable that the Special Instructions issued to the Officers commanding the Canadian Marine Police vessels should be brought into complete conformity with the latest instructions on the subject issued by the Admiralty to the Officers commanding Her Majesty's ships employed upon the station.

The enclosed Minutes of the Privy Council approves, under date the 29th June, of the amendments in the Special Instructions issued to the Officers commanding Marine Police vessels, which will, I trust, meet your approval, and carry out implicitly the views of Her Majesty's Government.

I have &amp;c.

(Signed,)

JOHN YOUNG.

Earl Granville, K.G., &amp;c., &amp;c., &amp;c.

*The Governor General to the Admiral.*

(Copy.)

NIAGARA, July 11th, 1870.

SIR,—In consequence of suggestions received from the Colonial Office, the Privy Council of the Dominion have consented to make some further alterations in the Special Instructions to the Officers commanding the Marine Police vessels, so as to bring them into complete accordance with the instructions issued by the Admiralty.

I have the honor to enclose a copy of the Special Instructions, as so revised, for your information.

I have &amp;c.

(Signed,)

JOHN YOUNG.

Vice Admiral Wellesley, C.B., &c., &c.  
Halifax.

(CANADA—No. 198.)

DOWNING STREET, 27th July, 1870.

SIR,—On receiving from Her Majesty the Seals of this Office, I took an early opportunity of communicating with Mr. Campbell, the Postmaster General of Canada, who has come to England to place before Her Majesty's Government the views of Your Government on various questions connected with the Dominion.

Mr. Campbell brought under my consideration the following subjects :—

The first was the protection of the Canadian Fisheries from encroachments by foreign fishing vessels. On this point I concur with your Ministers, that it would be desirable that the questions which have been so long in dispute with the United States, as to the geographical limits of the exclusive fishing rights of Canada under the Treaty of 1818, should be settled by a joint British and American Commission, on which the Dominion should be represented. Her Majesty's Government will propose to the United States Government the appointment of such a Commission.

Now that the instructions given to Her Majesty's cruisers and the Government vessels of Canada have been brought into harmony, I do not think it necessary in this despatch to make any observations on the details of those instructions.

I will only remark that I am most anxious to avoid any misunderstanding on this subject, between the Imperial and Canadian Governments, and with this view, the regulations to be issued for the fishing season of 1871, should be considered by the two Governments in good time before the season commences. Their nature must, of course, much depend on the establishment and progress of the proposed Commission, but I shall gladly receive from your Government, at the proper time, any statement on this subject and shall give it my best attention.

2. The Bill authorising the guarantee of the Fortification Loan, on which Mr. Campbell expressed some anxiety, is already before Parliament.

3. Mr. Campbell pressed strongly upon me that a representation should be made to the United States Government, with reference to the late Fenian incursion into Canada, which has awakened such just feelings of indignation in the Dominion, and he urged the claims of Canada for reparation for the losses which she has sustained by that incursion.

Her Majesty's Government have carefully considered what steps it would be advisable to take in this matter, and I have to acquaint you, that they are of opinion, that in the first instance, your Ministers should draw up a full and authentic statement of the facts, and of the claims which they found upon them.

This statement should be transmitted by you to Her Majesty's Government, in order that it may be laid by them before the Government of the United States, and I need scarcely say that whilst it should contain everything which is material to the case, it should be a document of such a character, as may properly be communicated to the Government of a State with which Her Majesty is on terms of amity.

4. Mr. Campbell, whilst stating the entire willingness of the Canadian Government to take measures for the defence of the Dominion, expressed a hope that an Imperial garrison would be maintained at Quebec. You are so well acquainted with the general policy of Her Majesty's Government, as to the distribution of Imperial troops, that I need not enter into any further explanation of that policy, and as regards the particular question of the garrison of Quebec, you are already aware, that it has been decided that a battalion of infantry and battery of artillery shall remain there during the coming winter.

I cannot conclude, without acknowledging the able and temperate manner in which Mr. Campbell brought under my consideration the various questions which have been discussed between us.

The opportunity which I have had of explaining to him the views of Her Majesty's Government, has made it unnecessary for me to do more than briefly indicate in this despatch the course which it is proposed to take.

I have, &c.,  
(Signed), KIMBERLEY.

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*Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council, on the 1st July, 1870.*

On a Report, dated 20th June, 1870, from the Honorable the Minister of Marine and Fisheries, submitting for the information of Your Excellency in Council, a memorandum and documents on the Fishery question, prepared for the Hon. Mr. Campbell, in connection with his mission to England, under the Minute of Council of 9th instant, and stating that these papers inform him of the position of the question at the present time, and of the views expressed on various occasions for several years past by the British and Canadian Governments; and that the instructions which may be addressed to Mr. Campbell, with reference to bringing to an early settlement all matters that have been admitted into dispute between the British and American Governments, affecting the Fisheries, should embrace the following principal points:—

1. That fishing rights in British American waters shall be in future enforced, as they existed and were maintained, under the Treaty of 1818, anterior to the Reciprocity Treaty of 1854, in accordance with the Laws of Nations.



2. That failing such positive enforcement of these undoubted rights, the question arising out of the said Treaty, as to the definition of certain limits of exclusion, by head-land lines, be referred to a mixed commission, to be named by the British and American Governments, and to be composed of one Imperial, one United States, and one Canadian Commissioner, providing some independent reference in case of need; the principle on which such commission shall be chosen and act, to be as provided in the Earl of Clarendon's Despatch of 11th May, 1866.

3. That such mixed Commission shall be formed during the current year, and shall, in order to facilitate speedy reference, hold its sittings either at Halifax, Washington, or Ottawa; the negotiations and preliminary arrangements for the same to be carried out between the Governor General of Canada and the United States Government, through the British Minister at the American Capital.

The Committee recommend that the Report of the Honorable the Minister of Marine and Fisheries be approved and acted on.

Certified.

(Signed),

WM. H. LEE,

Clerk Privy Council.

To the Honorable the Minister of Marine and Fisheries,  
&c., &c., &c.

*The Secretary of State for the Colonies to the Governor General.*

(Copy—CANADA—No. 219.)

DOWNING STREET, 11th August, 1870.

SIR,—I have received with much satisfaction your Despatch of July 9th, informing me that the Privy Council had approved of amendments in the Special Instructions issued to the Officers commanding Marine Police vessels, by which those instructions were brought into conformity with the instructions issued by the Admiralty.

I have to request you to state to your Ministers that Her Majesty's Government fully appreciate the loyalty they have shewn in thus bringing the action of the Canadian Government vessels into harmony with that of Her Majesty's cruisers.

I have, &c.,

Governor General,

The Right Honorable Sir John Young, Bart.,

G.C.B., G.C.M.G., &c., &c., &c.

(Signed,)

KIMBERLEY.

*The Governor General to the Admiral.*

(Copy.)

QUEBEC, September, 23rd, 1870.

SIR,—I have the honor to acknowledge the receipt of your Despatch of the 16th September, forwarding a copy of a letter from Lieut. Cochrane, commanding Her Majesty's gunboat "*Britomart*" employed in protecting the fisheries, reporting that a Mr. Wrayton is in the habit of selling ice and bait to American fishing vessels at "Stoddart Cove," in the District of Barrington, Nova Scotia, with the apparent sanction of the Custom House authorities.

I have caused a copy of your letter and inclosure to be forwarded to the Privy Council of the Dominion, for consideration.

I have, &c.,

(Signed,)

JOHN YOUNG.

Vice Admiral J. G. Wellesley, &c., &c., &c.,  
Halifax.

*To His Excellency the Right Honorable Sir John Young, Bart., Governor General of Canada, &c., &c., &c.*

MAY IT PLEASE YOUR EXCELLENCY,—Having been in June last requested to proceed to England to make personal representations to Her Majesty's Government on the several subjects hereinafter mentioned, and having discharged the duties entrusted to me, I beg to submit a report of my proceedings.

I found on my arrival in London that the death of the Earl of Clarendon, which had occurred whilst I was at sea, rendered a change in the Colonial Office probable, and although Lord Granville was good enough to see me on the subject of my visit, it was not until the appointment of his successor that I had an opportunity of making those full representations which it was the desire of Your Excellency's Government I should submit on the several subjects referred to. Lord Kimberley honored me with repeated interviews, and received my representations with every attention and consideration.

1. *The Fenian invasion and troubles caused by them.*—Upon this subject I pointed out the troubles and losses which, during a number of years, had been caused to Her Majesty's subjects in Canada, by the Fenian marauders; that these men were American citizens, many of them not even Irish by descent; that they were enlisted, armed, and drilled in the large cities of the Union, under the orders of a Fenian Congress and Executive assuming the pretensions of a Government, the drilling occasionally even taking place in company with militia corps, under officers believed to hold commissions under the Government of the United States, the United States journals of the day giving the fullest publicity to everything which was being done. I described the Fenian invasions and repulse in 1866, and referred to the representations and the claim for indemnity made by Sir George Cartier and Mr. Macdougall on behalf of Canada to Her Majesty's Government with reference to the losses thereby caused, which were stated in a memorandum furnished to the Colonial Office by those gentlemen as amounting to several millions. I referred to the several alarms which had taken place since 1866, all attended with more or less injury to the country, and with more or less expenditure, and said that early in the present year the threatened invasion and the actual one had injured the country very much; that the loss with regard to industrial pursuits it would be difficult to estimate, and there had been a large expenditure in sending forward volunteers to meet the invading forces. The number of men sent out was about 6,000 in April, and in May about 12,000—these numbers would be equivalent to calling out 60,000 and 120,000 in England. In answer to an inquiry by Lord Kimberley I said that I could not state the actual military expenditure with any accuracy, but that up to the time I left Canada it was supposed to be somewhere between five hundred and eight hundred thousand dollars, and that whatever it was, it formed but a small portion of the loss sustained by the country. We thought a very strong case might be made out for a demand for indemnity from the United States. Messrs. Cartier and Macdougall had asked that such a demand should be made with reference to the loss sustained in 1866, and we considered that we were entitled to ask for indemnity in reference to all the expenditure that had been since caused to us by the Fenians. Failing the obtaining of such an indemnity from the United States, we thought the Empire should join with Canada in meeting the losses; the Fenian difficulties were not of our creating, but grew out of real or imaginary wrongs that the Empire had in the past inflicted on Ireland, and we were fighting battles which were not ours but those of the Empire. We were quite ready as a portion of the Empire to bear our share of these or any other troubles in which the country might be involved, but it was not fair that we should be allowed to suffer alone all the losses and consequences of the Imperial acts or policy which were complained of, and I strongly urged that for the past and the future, should any further Fenian troubles arise, the Empire, as a whole, should bear the burden of resisting such attacks, and that Canada should only contribute as a portion of the Empire. Lord Kimberley suggested that the present generation of Canadians were as responsible for the alleged wrongs of Ireland as the present generation of their fellow subjects residing in Great Britain. Admitting this, I urged that the fair conclusion was that all alike, and not Canadians alone, should bear the losses and consequences of the course which



had been in the past followed towards Ireland. He Lordship said it was impossible for him to dispose of the question, and he took for granted that I did not anticipate he would, but he would consider it himself and obtain early consideration of it by his colleagues, letting the Canadian Government know what view was taken.

2. *The withdrawal of the Imperial troops and the relations of Canada to the Empire.*—On this subject I submitted to Lord Kimberley that when the Confederation of the several Provinces of British North America was suggested, it was agreed on all sides that it was a matter of both Imperial and Colonial policy, that Canada felt assured in carrying out the scheme, that it would have the advantage of the moral and material support of the Empire. We had undertaken the task, and so far, carried it out successfully, but at very considerable sacrifice, and a sacrifice that was likely to be continuous. There was a growing feeling in Canada of distrust in the disposition of the Imperial Government to give us that support to which we thought ourselves entitled. It was somewhat difficult to point out the exact grounds which had occasioned this feeling, but generally it proceeded from the tone adopted by public men, and particularly by members of the Government, in reference to Colonial and Canadian topics. There seemed to us to be a disposition to overlook the exertions we had made for the purpose of preserving the connexion, and to depreciate the strong feeling of attachment which subsisted towards the Mother Country, and we apprehended a tendency on the part of the Government to withhold from us that assistance and support so likely to cement the existing relations.

Lord Kimberley said that his attention had been called to the feeling of distrust to which I had referred, but that he thought nothing had been done by the British Government to afford any grounds for it: there was no desire to separate Canada from the Empire, and so long as we desired to remain connected they could not either in duty or honor do anything in the direction of severing the connexion: he thought the feeling of distrust not justified by anything that had occurred. The Government did not wish to interfere with the freedom of Canada's future, but so long as she chose to remain connected with the Empire, so long under all circumstances of foreign aggression was the Empire bound to maintain the Union, and would do so, but in internal affairs it was the duty of Canada to protect herself.

I said that we had for many years undertaken the maintenance of the internal peace of the country, but that we did not consider the Fenian invasion an internal trouble, but one proceeding from Imperial causes, from which the Imperial Government should protect us, or against the expense of which they should indemnify us. I urged that it would reassure the public feeling in Canada very much if the garrison at Quebec were to be maintained: we did not ask this on account of the number of men which might be placed there, but because their presence would be to us a symbol of the sovereignty of the Empire. Quebec was an Imperial fortress, and the maintenance of the garrison of Her Majesty's Troops there, would be looked upon as indicating the determination in England to maintain the existing relations, and would have the most useful effect on public feeling in Canada. I pointed out that the argument which had been used, that the maintenance of a garrison at Halifax was much the same as retaining one at Quebec, was not just, inasmuch as Halifax was 600 miles from Quebec, and the Railway which Lord Granville had spoken of in Parliament was not completed, and would not be for two or three years. I added that the French Canadian population regarded with particular disfavor the withdrawal of the troops, and expressed a hope that the Government would reconsider the question.

Lord Kimberley said that the matter had been repeatedly and very fully considered, and that the decision that had been arrived at was not likely he thought to be departed from, but my representations should be considered.

3. *Fisheries*—I urged upon Lord Kimberley the great importance to Canada of the Fisheries, which employed a large number of seamen, and had many collateral pursuits and industries dependent upon them. We possessed the whole of the herring and mackerel Fisheries on the Western side of the Atlantic, the Americans having no inshore Fisheries of any great value. This possession was of the first importance to us, and we felt exceedingly anxious that it should be maintained in accordance with Treaty rights. Induced by a

strong sense of the responsibility involved in the matter, and out of deference to Imperial views we had proposed in 1865 the License System ; we had given every possible opening in this direction at a sacrifice of our immediate interests in order that our affairs might not tend to endanger the peace of the Empire. This system had been continued to the present year, and we were satisfied that no advantageous results would be obtained from it.

Lord Kimberley admitted that the time had come when Canadians might reasonably expect that the state of things anterior to the Reciprocity Treaty should be reverted to, or that some other definite arrangements with the Americans on this subject should be arrived at. He added that he was glad that I had not mixed up the two questions of Reciprocity and the Fisheries, because he saw no reason to expect a renewal of that treaty : he agreed, he said, that the Fisheries question should be treated by itself. I said that we in Canada had arrived at similar conclusions. The policy of conciliation had been fully tried, and we ceased to expect anything from the Americans from it. We thought the only course now open to us was to ask the Imperial Government to fall back upon the rights which we enjoyed and maintained anterior to the Reciprocity Treaty, and I was directed to request this at the hands of the Government.

Lord Kimberley said there might be some difference with regard to the interpretation of the Treaty as to Bays. I replied that we thought it clear upon that point, but that the suggestion made by Mr. Adams in 1866, and adopted by Lord Clarendon, to have a joint commission to settle on the ground the line within which, under the Treaty, exclusive fishing was to be enjoyed would be a satisfactory mode, as far as the Canadian Government was concerned, of disposing of any difficulty which might exist as to the interpretation of the treaty as regards Bays ; but I urged that should a Commission be appointed a representative from Canada should be upon it, and that its sittings should be held in America, and if possible in Ottawa or Halifax.

Lord Kimberley said he concurred in the suggestion for the settlement of whatever doubt might be found to exist as to the interpretation to be put upon the Treaty with regard to Bays ; that he merely spoke his own views, however, but that he would bring the matter at an early day before his colleagues, and would then give a final answer.

4. *Fortifications.*—I found that the Guarantee Bill was about to be introduced into the House of Commons shortly after my arrival, as it subsequently was and became law.

I had the fullest opportunity of presenting to Lord Kimberley the views of Your Excellency's Government on the several questions referred to, and before leaving London he did me the honor to inform me of the conclusions which had been arrived at by Her Majesty's Government in reference to the matters which had been discussed. These conclusions were subsequently communicated to Your Excellency in his Lordship's despatch of the 27th of July, and I need not here, therefore, particularly refer to them. I availed myself, however, of the opportunity afforded by their being communicated to me by Lord Kimberley to press for some indication as to the course Her Majesty's Government would pursue :—1st, in the event of the United States refusing to listen to any claims as to the losses inflicted upon us by the Fenian invasions, would they then, I asked, make the losses, as the causes of them were Imperial, and unite with Canada in bearing them. He could not pledge the Government in advance : he did not wish to be understood as dissenting from my argument as to the equity of such an arrangement, nor as assenting to it : they would take it up when the result of their appeal to the Government of the United States should become known. 2nd, as regards the Fisheries—should the American Government refuse or neglect the suggestion for a Joint Commission, would they then fall back on the rights maintained anterior to 1854? He could not commit the Government in advance : they would urge the creation of a Commission in every way in their power. Should they fail they would consult with the Canadian Government, and with them, or after hearing them, decide as to the course to be pursued, and the instructions to cruisers to be issued another year.

All of which is respectfully submitted,

By Your Excellency's

Most faithful servant,

Ottawa, 10th September, 1870,

A. CAMPBELL.



*Vice-Admiral Wellesley to the Governor General.*

(Copy.)

*Royal Alfred, at Halifax,*

27th September, 1870.

Sir,—Being on the point of relinquishing the command of this station, the duty of reporting the results of the measures adopted during this season for the protection of the Canadian fisheries will devolve on my successor; but I cannot refrain from bringing to Your Excellency's notice that the few colonial schooners which have been employed on the fisheries this year have been of great use in preventing American fishermen from violating the law by fishing within the three mile limit, and it is my opinion that it would be most advisable to increase this force next year to at least two schooners on each fishing station, so that one might always be in company with the respective fleets of fishing vessels.

I have, &c.,  
(Signed,) GEORGE S. WELLESLEY,  
Vice-Admiral.

His Excellency the Right Honorable

Sir John Young, Bart., G.C.B., K.M.C.,

&amp;c., &amp;c., &amp;c.

*Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council on the 20th October, 1870.*

The Committee of Council having heard of the departure of His Excellency Vice-Admiral Wellesley, C.B., would fail in their duty to the Country if they did not express to Your Excellency the deep regret with which they learned that the Vice-Admiral had been recalled from the British North American station, and place on record their high appreciation of the admirable manner in which he has aided the Government of Canada in protecting its waters from the encroachments of foreign fishing vessels.

The judicious manner in which that delicate and difficult duty has been discharged by Vice Admiral Wellesley and the officers under his command has fully demonstrated the important fact that the measures taken by the Government of Canada, with the effective aid thus given by the Imperial Government, will secure to H. M.'s subjects their admitted rights in British American waters, and that the same policy judiciously pursued will not only result in the efficient protection of the great body of British seamen engaged in prosecuting those fisheries, but also promote in no small degree the great national interests connected therewith, and will be at the same time the best means of avoiding collision between the subjects of H. M. and the citizens of the United States.

The committee desire especially to draw attention to the energetic but discreet manner in which Captain Hardinge, of H. M. S. *Valorous* carried out the instructions of the Vice-Admiral and the important services rendered by him in protecting the fishing grounds of the Dominion.

The Committee would request that Your Excellency will be pleased to forward a Copy of this Minute to His Excellency Vice-Admiral Wellesley and also to the Right Honorable the Secretary of State for the Colonies for submission to the Lords of the Admiralty.

Certified.

WM. H. LEE,  
Clerk, Privy Council.

*The Governor General to the Admiral.*

(Copy.)

MONTREAL, October 11th, 1870.

SIR,—I have the honor to acknowledge the receipt of your letter of the 27th September, expressing an opinion that it would be advisable to increase the force next year of the Canadian Police Vessels employed in the protection of the Fisheries.

I have caused a copy of your communication to be forwarded to the Privy Council of the Dominion for consideration.

I have, &amp;c.,

(Signed,)

JOHN YOUNG.

Vice Admiral G. G. Wellesley,  
Halifax, N. S.

*The Secretary of State for the Colonies to the Governor General of Canada.*

(Copy.)

DOWNING STREET, 10th October, 1870.

SIR,—I enclose the copy of a memorandum which I have requested Lord Granville to transmit to Sir E. Thornton, with instructions to communicate with you before addressing himself to the Government of the United States on the subject to which the memorandum relates.

The object of Her Majesty's Government is, as you will observe, to give effect to the wishes of your Government by appointing a joint commission on which Great Britain, the United States and Canada are to be represented with the object of enquiring what ought to be the geographical limits of the exclusive Fisheries of the British North American Colonies.

In accordance with the understood desire of your advisers it is proposed that the enquiry should be held in America.

The proposal contained in the last paragraph is made with a view to avoid diplomatic difficulties which might otherwise attend the negotiation.

I have, &amp;c.,

(Signed,)

KIMBERLEY.

Governor General,  
The Right Honorable SIR JOHN YOUNG, Bart.,  
G.C.B., G.C.M.G.

*The Secretary of State for the Colonies to the Governor General.*

(COPY—CANADA, 175.)

DOWNING STREET, 30th June, 1870.

No. 121

SIR,—I have received your despatches noted in the margin relating to the

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Canadian Fisheries, so far as they regard the admission of United States

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fishermen to fish in Canadian waters beyond the three mile limit; they

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are for the present disposed of by my dispatch, No. 138, of the 6th of June, and by the telegraphic intelligence which I have received from you.

You will understand that the object of Her Majesty's Government is, without prejudicing the eventual rights of Canada, to confine the action of the British and Canadian authorities for the present to waters with respect to which no possible controversy can arise.

With regard to your despatch, No. 121, I have to inform you that the phrase "offence of fishing" used in Sir F. Roger's letter to the Secretary to the Admiralty, of the 30th April is to be understood as including such offences as "preparing to fish" which constitute a ground of seizure under the Canadian law.



The proposal that the determination of the boundaries of Canadian waters should be placed in the hands of a mixed commission will, I presume, be brought before me by Mr. Campbell, whose departure from Canada is announced in your despatch, No. 131, of the 9th of June.

I have &c.

(Signed,)

GRANVILLE.

Governor General, The Right Honorable Sir John Young, Bart.,  
G.C.B., G.C.M.G.

*Earl of Kimberley to Sir John Young.*

DOWNING STREET, 27th July, 1870.

\* \* \* \* \*

The first despatch was the protection of the Canadian Fisheries from encroachment by foreign fishing vessels. On this point I concur with your Ministers that it would be desirable that the questions which have been so long in dispute with the United States as to the geographical limits of the exclusive fishery rights in Canada under the Treaty of 1818, should be settled by a joint British and American Commission on which the Dominion should be represented.

Her Majesty's Government will propose to the United States' Government the appointment of such a commission.

Now, that the instruction given to Her Majesty's cruisers and the Government vessels in Canada have been brought into harmony, I do not think it necessary in this despatch to make any observations on the details of these instructions, I will only remark that I am most anxious to avoid any misunderstanding on this subject between the Imperial and Canadian Governments, and with this view the regulations to be issued for the fishing of 1871 should be considered by the two Governments in good time before the season commences.

Their nature must, of course, much depend on the establishment and progress of the proposed commission, but I shall gladly receive from your Government at the proper time any statement on this subject and shall give it my best attention.

\* \* \* \* \*

\* \* \* \* \*

(Signed)

KIMBERLEY.

*Vice Admiral Farshawe to the Governor General.*

(Copy.)

"*Royal Alfred*," HALIFAX,  
17th October, 1870.

SIR,—I have the honor to enclose, for Your Excellency's information, a copy of a letter from Lieut. Basil Cochrane, commanding Her Majesty's Gunboat *Britomart*, employed in the protection of the Fisheries in the Bay of Fundy.

2.—It would appear from paragraphs 4 and 5 of Lieut. Cochrane's letter, that fishermen of the United States are in the habit of resorting to Welchpool and St. Andrews, in the Province of New Brunswick, in order to purchase salt; the Collectors of Customs, at those places being unaware of the prohibition of that traffic, contained in the 3rd Section of 59 George III, cap. 38.

3.—Lieut. Cochrane also states, in paragraphs 6 and 7, that he had received local information that United States fishermen are in the habit of fishing on the coast during the winter months; and in corroboration he was informed by the Fishing Warden for the coast from Cape Lepreau to Letête, that he had seen as many as thirty American schooners fishing close to the land last January.

4.—Captain P. A. Scott, R. N., the officer in command of the cruizers employed by the Dominion of Canada, is expected here about the end of the present month, when I propose to confer with him on this subject.

I have, &c.,  
(Signed,)

E. FANSHAWE,  
Vice Admiral.

His Excellency The Governor General, &c., &c., &c.

*Fishing Report, No. 7.*

Her Majesty's Gun Boat *Britomart*, at Flag's Cove,

GRAND MANAN, 30th September, 1870.

SIR,—I have the honor to report that I left Seal Cove, Grand Manan, on the 23rd inst., and proceeded to Long Island Bay, coming to at the anchorage inside Long Island.

2.—I found most of the fishermen at the north end of Grand Manan, engaged with the Weir fishing. The herring I am informed, being more plentiful than for many years past, so much so, that the greater part of the smoke houses are already filled, and the herring that are taken now are being converted into oil and manure.

3.—I left Long Island Bay on Sunday, the 25th, and proceeded to Welchpool, Campobello.

4.—I find that American fishing vessels are in the constant habit of coming to Welchpool for salt. Mr. Farmer, the Collector of Customs, called on me and asked my opinion as to whether that was against the law. I read to him the 3rd Section, 59 George III, cap. 38, (No. 2 of the Appendices) which article he had not before seen.

5.—I proceeded on Tuesday the 27th, to St. Andrews, and found that that also was a place of call for the American fishermen to purchase salt. Mr. Grove, the Collector at St. Andrews informed me the Custom House Officers had no orders against allowing American fishing vessels to come in for salt, or stores of any description whatever.

6.—I left St. Andrews on the 28th and proceeded through Letête Passage to L'Etang Harbor. I found at L'Etang the only time the fishermen complained of the Americans was in the winter, from end of December to beginning of March.

7.—I proceeded on the 29th to Beaver Harbor, where I communicated with Mr. Best, the Fishing Warden for the coast, from Cape Lepreau to Letête Passage, who gave much the same information as I had received at L'Etang, adding that he had seen as many as 30 American Schooners fishing close to the land last January.

8.—I left Beaver Harbor the same day, and arrived in this Cove yesterday evening.

9.—I propose proceeding next to Westport, Bryer's Island, and to Cape Sable, and then returning to the southern head of Grand Manan, and will call at Welchpool, Campobello, about the 12th October.

I have, &c.,  
(Signed,)

BASIL E. COCHRANE,  
Lieutenant and Commander.

Vice Admiral G. G. Wellesley, C. B., &c.,  
Commander in Chief.



*The Governor General, to the Governor of Newfoundland.*

OTTAWA,

October 24th, 1870.

SIR,—I have the honor to acknowledge the receipt of your letter of the 10th inst., forwarding for the information of the Canadian Government, copy of an Act passed by the Legislature of Newfoundland, for the protection of the Fisheries, together, with a copy of a Proclamation, notifying the determination to enforce the provisions of said Act in the Colony and its dependencies.

I have forwarded a copy of your letter and enclosure to the Privy Council, of the Dominion and to Her Majesty's Minister at Washington, for their information respectively.

I have, &c.,  
(Signed), JOHN YOUNG.

The Governor of Newfoundland.

*Report on the practice which prevailed previous to the Reciprocity Treaty, respecting United States Fishing Vessels trading in Provincial ports, &c.*

DEPARTMENT OF MARINE AND FISHERIES,

OTTAWA, 5th November, 1870.

With reference to the Earl of Kimberley's confidential despatch of the 12th ultimo, requesting information as to what was the actual practice which prevailed previous to the Reciprocity Treaty between Great Britain and the United States, in regard to the exclusion of American fishermen from trading or effecting commercial operations in the ports of the different Provinces of British North America, the undersigned has the honor to state :

That the right to prevent American fishing vessels from resorting to Provincial bays and harbors, for purposes of trade, was actually asserted and carried out under the Imperial and Colonial statutes, enacted to give effect to the provisions of the Treaty of 1818, anterior to the Reciprocity Treaty of 1854.

Vide App. 4, pp. 107-10, Between the years 1817 and 1854, several United States  
Nova Scotia Journals, fishing vessels were detained and seized by Imperial and Colonial  
1853. officers for infractions of the Treaty, and violation of these statutes.

Many of them were condemned. Among the specific offences of fishing, for which numerous seizures and confiscations took place during this period, American fishing vessels were accosted and detained for the following reasons :—

1. Anchoring or hovering in-shore during calm weather without any ostensible cause, having aboard ample supplies of wood and water ;

2. Lying at anchor and remaining inside of the bays to clean and pack fish ;

3. Purchasing and bartering bait ;

4. Selling goods and buying supplies ;

5. Landing and transshipping cargoes of fish.

The undersigned begs leave to refer, in the first place, to the Imperial instructions under which, antecedent to the convention of 1818, American fishing vessels were excluded from British bays and harbors in North America, conformable to the Treaty of 1783. The following Admiralty order for the governance of Officers commanding vessels engaged in the protection of the fisheries and the prevention of illicit trade, signed by Rear-Admiral Milne, bears date the 12th May, 1817 :—

Vide British and Foreign State Papers, No. 7, 1819-20, p. 139. “ On your meeting with any foreign vessel, fishing, or at anchor, in any of the harbors or creeks in His Majesty's North American Provinces, or within our maritime jurisdiction, you “ will seize and send such vessel so trespassing to Halifax, for adjudication, unless it should

"clearly appear that they have been obliged to put in there in consequence of distress, "acquainting me with the cause of such seizure, and every other particular, to enable me "to give all information to the Lord Commissioners of the Admiralty."

Under this instruction numbers of American fishing vessels were seized in Ragged Island harbor, on the 8th of June, 1817, where they pretended to have sought shelter. The seizures were objected to on behalf of the United States Government, on the ground that these vessels entered from a lawful and necessary motive; but, on investigation, it was found that, as explained by His Majesty's Government, they were in the habit of occupying, and at the time of seizure, actually occupied this harbor without any legitimate excuse. The fishing schooners *Nabby* and *Washington* were seized in 1818, and condemned for being at anchor in, and hovering near, a settled British harbour. The *Java*, *Independence*, *Magnolia*, and *Hart*, were detained and confiscated in 1839, for being in harbour without lawful cause, and cleaning fish on deck. In 1840, the fishing vessels *Papineau* and *Mary* were seized and sold for purchasing bait ashore.

The right of excluding American fishing vessels from the Provincial ports, bays, and harbours, except in case of distress, was thus enforced just before the Convention, and some time after, for similarly resorting to British bays and harbours, except for the specified purposes arranged in the the treaty of 1818, to purchase wood and obtain water, and for shelter and repairs. This right was formally and continuously asserted throughout the intervening period to 1852, when the distinct offence of trading for supplies and transshipping fish cargoes became the subject of specific instructions. The Collectors of Customs at some of the ports of Nova Scotia having granted permits to authorize such transactions, the Provincial officers in command of the fisheries protection service asked for positive instructions. They were, therefore, instructed by the Government of Nova Scotia, that United States fishing vessels, with or without permits, could not legally land

Vide App. 4, p. 141, freight, or frequent such ports and harbours for any purposes  
Nova Scotia Journals, whatever, not described in the treaty. The following official  
1853. direction, dated at Halifax, the 28th of August, 1852, is signed  
by the then Provincial Secretary, the Honorable Joseph Howe:—

"No American fishing vessels are entitled to commercial privileges in Provincial "ports, but are subject to forfeiture if found engaged in traffic. The Colonial Collectors "have no authority to permit freight to be landed from such vessels, which, under the "Convention, can only enter our parts for the purposes specified therein, and for no "other."

The question arose on the practice of taking on board articles necessary to fishing operations, landing fish for transshipment, and refitting in ports and harbour, at various places around the coast of Nova Scotia, and producing a written permission from some Customs' Collector.

Vide App. 4, pp. 138-9, During the same year, Vice-Admiral Seymour applied to the  
Nova Scotia Journals, Admiralty for special instructions as to the powers of naval  
1853. officers to seize or interfere with United States fishing vessels  
resorting to ports or harbors for other than the purposes defined in the Convention. The  
matter was referred to the Law Advisers of the Crown. They pronounced the opinion that  
Dated 25th September, these officers were empowered under their instructions to "seize"  
1852. American fishing vessels only for the offence of fishing within the  
prescribed limits. but the vessels might be warned off and compelled to depart, and could  
App. 4, pp. 139-41. be seized by such officers or others, if so authorized by Order in  
Council,—the penalties or mode of procedure depending upon the local laws and regula-  
tions of each Colony. The legal opinion recited, adds that "independently of the express  
provisions of the statute," vessels infringing these laws, by resorting to ports or harbors for  
other than the purposes specified by the treaty, might be warned and compelled to depart  
by whatever force is reasonably necessary by persons authorized by the Colonial Governors,  
or the British Admiral.

The Imperial and Colonial Statutes now in force, provide for regulations in pursuance of the treaty to enforce the terms of the Convention; and instructions to Commanders of



Marine Police Vessels, approved by Orders in Council, are such existing "Regulations" provided for by the Statutes as are deemed "*necessary to prevent*" American fishermen from abusing "*in any other manner whatever*" (besides fishing) the privileges reserved to them by the Convention.

The foregoing references should suffice to establish that the restriction in question is neither novel, strained, nor vexatious.

The whole, nevertheless, respectfully submitted.

P. MITCHELL,  
Minister of Marine and Fisheries.

DOWNING STREET, Decembér 22nd, 1870.

(Copy.)—CANADA. No. 318.

MY LORD,—With reference to my despatch No. 265, of the 12th of October, relating No. 15.—Nov. 23d, 1870. to the Fisheries, I have the honor to transmit to you, for your information, the enclosed copy of a despatch received from the Lieutenant Governor of Prince Edward Island reporting the steps which he has taken to give effect to the decision arrived at by H. M.'s Government with regard to the admission of United States fishing vessels to British Ports for the purpose of obtaining supplies and of transhipping fish.

I have conveyed to the Lieutenant Governor my approval of the course he adopted.

I have, &c.,

(Signed,)

KIMBERLEY.

Governor General

The Right Honorable Lord Lisgar, Bart., G.C.B., &c.

*Lieutenant Governor Robinson to the Earl of Kimberley.*

(Copy.)—Prince Edward Island. No. 15.

GOVERNMENT HOUSE, November 23rd, 1870.

MY LORD,—I have the honor to acknowledge the receipt of Your Lordship's despatch, No. 32, of the 20th ult., informing me that the transshipment of fish and obtaining supplies by the United States fishing vessels in the ports of this Colony cannot be regarded as a substantial invasion of British rights, and I beg to report that the Custom House authorities have been instructed that they are not, until further orders, to prevent United States fishermen from entering the Bays of Prince Edward Island for such purposes.

2. I have caused the United States Consul at this port to be informed of the footing on which this question now stands, though the suspension of the prohibition is of no immediate practical importance, the fishing for this season being at an end.

3. A copy of the notice which was published in the Government Gazette, on receipt of your Lordship's despatch, is herewith enclosed.

4. The Colonists are not a little gratified at the result of the appeal made by the late Government to the Secretary of State. Trade suffered severely in consequence of the action which Government felt called upon to take in August last, and the people look forward with satisfaction to reopening their ports next summer to their remunerative and welcome visitors.

5. I wish to add, however, with reference to the last paragraph of your Lordship's despatch, that my Government will not be found disposed to act otherwise than in unison with Her Majesty's Government and the Government of the Dominion in any steps which it may be necessary to take hereafter "for the more effectual prevention of encroachments on the Colonial fisheries by foreign vessels."

I have, &c.,

(Signed,) WILLIAM ROBINSON. *Lieut. Governor.*

The Right Hon.

The Earl of Kimberley, &c.

(Copy.)

## NOTICE.

His Honor the Lieutenant Governor in Council has been pleased to cancel the instructions issued to Custom House officers, on the 23rd of August, 1870, respecting the practice of admitting United States fishing vessels to entry in the ports of Prince Edward Island, and to direct that such vessels shall be permitted to enter, tranship their cargoes of fish, and obtain supplies in the ports of this Colony, as aforesaid, from this date and until further orders.

(Signed,) CHARLES DESBRISAY, C.E.C.

Executive Council Chamber.  
November 17. 1870.

*Minute for the Executive Council.*

The Administrator of the Government deems it to be his duty to bring to the notice of the Executive Council, a practice which prevails in the Port of Charlottetown, of admitting vessels owned and registered in the United States of America, and engaged in the fishery of the Gulf of St. Lawrence, to entry at the Customs, and permitting their cargoes of fish to be landed and transhipped to ports in the United States.

The Administrator of the Government, entertaining grave doubts as to the legality of this practice, under the provisions of the Treaty of 1818, between the Imperial Government and that of the United States of America, relating to the Fisheries, submits the matter to the consideration of the Executive Council, in order, that if the Administrator's doubts be well founded, prompt action may be taken on the part of the Government to put a stop to the practice, and the Consul of the United States of America notified that in future it will not be permitted at the Port of Charlottetown, or at any of the other ports of this Island.

(Signed,)

R. HODGSON,  
Administrator.

• 3rd August, 1870.

*Extract from Minute of Executive Council.*

COUNCIL CHAMBER,  
2nd September, 1870.

At a Meeting of Council.

*Present :—*

His Honor the Administrator of the Government.

&amp;c.

&amp;c.

&amp;c.

The following Minute, in answer to the Memorandum of the Government, which was laid before the Board on the 4th day of August, relative to the practice prevailing in the Port of Charlottetown, of allowing American fishing vessels to entry at the Customs, and also permitting their cargoes of Fish to be transhipped to foreign ports, was agreed to, and the same was read and is as follows :—

*To His Honor Sir ROBERT HODGSON, Knight,  
Administrator of the Government of Prince Edward Island,  
&c., &c., &c. In Council.*

SIR,—The Council have had under consideration your Honor's Minute of the 3rd ultimo, calling their attention to a practice " which has prevailed of admitting the fishing vessels of the United States to entry at the Custom House, and permitting their cargoes of fish to be landed for the purpose of transhipment to United States ports." Also, intimating that your Honor entertains doubts as to the legality of the practice, under the Treaty of 1818.



In reply, the Council ask permission to state,

1st. That the existence of the practice, referred to by your Honor, was mentioned in the Council's Minutes of June 1st, in the present year, addressed to your Honor, in reply to a Despatch of Earl Granville, No. 14, April 29th, 1870, wherein his Lordship desires to be informed whether certain statements concerning the Fisheries in Prince Edward Island are correct, as a copy of that Minute was forwarded to the Colonial Office, and its receipt has been acknowledged, but no comments made on its contents, or any intimation given to this Government that a change of system, with regard to foreign fishing vessels, was contemplated. The Council had assumed that the explanations offered by them were satisfactory, and that no change affecting this Island would be carried into effect at present.

2nd. Lest it should be supposed that the people of this Island, alone of all the Maritime Provinces of British North America, have deliberately, and with the connivance of their Local Government, carried on an illegal but lucrative business, the Council remind your Honor, for the information of the Secretary of State, that the practice referred to in your Honor's Minute, has, until a recent period, been permitted in the Strait of Canso, that the New Brunswick Railway has transported large quantities of fish of foreign take, and that Her Majesty's Representatives could not fail to be cognizant of the practice of transshipping cargoes, and supplying foreign fishing vessels. Moreover, no attempt at concealment thereof was made in the summer of 1869, during the visits of the two Vice-Admirals and several Commanders of Her Majesty's ships to Charlottetown Harbor, consequently, it is not surprising that merchants and traders in this Colony should regard the practice referred to without suspicion of its illegality.

3rd. Neither can it truly be said that the Government of this Colony have sought to obstruct, or have ever declined to promote the Imperial policy on the Fishery question.

In proof of this the Council remind your Honor, that in previous years, when the system of licensing foreign fishing vessels prevailed, it had been usual to fix the amount of tonnage duty by preconcerted arrangements between the Colonies concerned, and in the month of June last, when the time for issuing licences was at hand, and no intimation of the intentions of either of Her Majesty's or the Dominion Governments had been received, your Honor was advised to send a telegram to Sir John Young, requesting to be informed "What action his Government intended to take with reference to the "Fisheries?" and expressing "the desire of this Government to act in unison with the "Dominion."

The reply to that message was received here on the 13th of June, and covered various documents named in the margin, from the Department of the Minister of Marine at Ottawa.

Several of these, if the co-operation of this Colony was desired, might have been communicated at a much earlier date, in which case the subject might have been brought to the notice of the Legislature, or timely warning might have been given both to colonists and foreigners not to engage in a traffic which is now held to be illegal.

The neglect of this ordinary act of intercolonial courtesy will cause serious loss to Her Majesty's subjects of all classes, as well as to foreigners engaged in the fishery business, some of whom have carried on extensive transactions in this Island with mutual advantage to themselves and the colonists.

4th. Such was the position of the fishery question when your Honor addressed the Minute of August 3rd to this Board.

The Crown Land officers were in consequence called on to report their opinion thereupon, which they did to the effect that "the United States fishing vessels have no legal right to "enter any of the harbors of this island for the purpose of entering at the customs, and "landing, and transshipping cargoes of fish."

The illegality of the practice concerning which the Minute of August 3rd informs the Board that your Honor "entertains doubts" being thus established, the duty of the Council was obvious, and your Honor is aware that such instructions have been sent to the collectors of customs throughout the colony as will prevent foreign fishermen from

entering the harbors of the island, except for the purposes permitted by the Convention of 1818.

One United States vessel, however, entered at Charlottetown while the subject was still under the Council's consideration, and transhipped her cargo of mackerel, and this case has been the subject of a communication by Admiral Wellesley to the Admiralty.

5th. Having thus acquitted themselves of their duty and caused the law to be carried into effect, though at a sacrifice to their fellow Colonists, which will be little appreciated elsewhere. The Council feel bound to protest against the policy now re-adopted. That policy may have been well suited to the circumstances of the Colonies fifty-two years ago, but the Council venture to think it inapplicable at the present day when free-trade principles which British Statesmen has declared to be the principles of common sense the basis form of the British commercial code.

Fairly stated, the old policy revived demands from the people of Prince Edward Island, the exclusion from their harbour of their best customers—customers who have employed the colonial marine in importing salt for their use; the colonial mechanics in manufacturing their barrels; customers who have purchased their clothing, their provisions and their sea-stores in the Island markets. These men are to be expelled until the forty millions citizens of the United States succumb to the pressure put upon them by four millions of colonists, and consent to concede reciprocity in exchange for free access to the fishing grounds and harbors of the Colonies.

The Council submit that this was not the principle on which the Cobden Treaty was based, it was not held by its authors that because France declined to reciprocate with England as fully as the latter desired, therefore England should tax or exclude the wines of France until she consented to remove the protective duties from iron and cutlery.

6th. If little can be said in favor of the revised policy of 1818 in an economical point of view, still less can be said in its favor politically. It is essentially a policy of exclusion enforced by the armed ships of Her Majesty's fleet, and therefore tends seriously to estrange a friendly but proud and sensitive nation, whose citizens freely admit the right of Great Britain to prevent them from fishing within the three-mile limit, but who assert that their cargoes of fish taken without that limit are not contraband, and that to refuse the right of entry to such at Colonial custom-houses is unfriendly, and they affirm illegal, and this view of the case has been taken by an eminent Queen's Counsel of the Prince Edward Island Bar—the Honorable Edward Palmer—who agrees with the Attorney and Solicitor General in their view, supposing the cargoes of fish for which entry was sought to have been taken within the three-mile limit, but asserts that for cargoes taken beyond that limit the right of entry cannot be refused.

7th. The Council would also urge upon the Secretary of State the impolicy of pressing an odious system upon an unwilling people, they assure Lord Kimberley that their fellow-Colonists are enthusiastically loyal in their attachment to Her Majesty's person and family, and are notorious for their adherence to British Institutions, their trade connections with the United States have not undermined their loyalty, nor persuaded them that better political institutions than their own exist elsewhere, and the Council submit that the policy of exclusion will lack one of the chief elements of success, if it does not obtain the moral support of the people for which supposed benefit it is undertaken.

8th. The Council would ask permission to call the Secretary of State's attention to the addresses of the legislative bodies of this Island in the years 1849 and 1852, also to the correspondence between Earl Grey, Sir John Pakington, and Lieut. Governor Bannerman in the years 1852 and 1853. The latter far-seeing gentleman predicts the establishment of the carrying trade of fish on the New Brunswick Railway, to which allusion has been made in the second paragraph of this Minute, and describes a state of things which in many respects has a very exact parallel at the present time.

9th. In conclusion, the Council desire to press upon your Honor's notice, for the guidance of the Secretary of State, the importance of cultivating friendly relations with



the neighbouring Republic, and the danger of persevering in the present system which is certain to produce discontent amongst the colonists, and bad feeling if nothing worse in the United States. A renewal of the Reciprocity Treaty would be a most welcome boon to the people of this Colony, and, failing that, a reduction of the United States' tariff upon the produce and manufactures of the Colonies; but the Council do not believe that the United States can be coerced into compliance by the pressure now applied, and they apprehend that all such attempts discrediting as they do the soundness of the principles of free trade will only increase the difficulty of gaining the desired concession by negotiation.

All which is respectfully submitted by the undersigned.

(Signed,)

ROBERT P. HAYTHORNE,  
President.

Benj. Davies,  
H. J. Calbeck,  
Peter Sinclair,  
George P. Howlan,  
A. A. McDonald,  
W. W. Lord.

*Royal Alfred,*

BERMUDA, 15th December, 1870.

MY LORD,—I have the honor to forward herewith, for your Lordship's information, a copy of my letter to the Lords Commissioners of the Admiralty, on the subject of the Canadian Fisheries, together with copies of the reports from the respective commanding officers of Her Majesty's ships which were employed on this service during the past season.

I have the honor to be, my Lord,

Your Excellency's obedient servant,

(Signed,)

E. G. FANSHAWE,  
Vice Admiral and Commander  
in Chief.

His Excellency, The Right Honorable  
Lord Lisgar, G.C.B., G.C.M.G., &c., &c.,  
Governor General.

*Protection of Canadian Fisheries—General Report for 1870.*

(Copy.—No. 55.—8 enclosures.)

*Royal Alfred, HALIFAX, 22nd November, 1870.*

SIR,—The fishing season on the Canadian coast having drawn to a close, I beg to forward herewith the reports in original from the several officers in command of the ships employed on this service.

In forwarding these reports I beg leave to offer the following observations:—

2. As stated in my answer (letter No. 41, of the 16th instant) to the specific question put to me in their Lordship's letter of the 15th October, No. 20, M, I believe that no great diminution in the difficulty of enforcing the law against illegal fishing was caused by such additional stringency as could be applied to the protection of trade after the withholding of the licenses, consequently no material increase in the difficulty will ensue from the relaxation recently enjoined by the Government.

3. The strong interest that both the resident British traders and the United States fishermen have in maintaining the trade would, in my opinion, render its suppression extremely difficult, even were it thought judicious to continue the attempt, whilst the combination between these two bodies to evade British law, and the sympathies arising therefrom must be very undesirable.

4. But though the effect of prohibition to trade in checking illegal fishing has been feeble, the irritation produced by it on the United States appears to have been relatively great. It must, however, be evident that the number of United States fishermen who frequent the fisheries is too large, and their determination to trespass upon colonial coast fisheries too general to admit of the law being maintained without the adoption of vigorous repressive measures.

5. I am of opinion that the three objects of

1. Protection to the Colonial Fisheries ;
2. Unrestricted commerce to the Colonial Traders ;
3. Avoidance of all reasonable ground of irritation in the United States ;

May best be accomplished by an adequate Colonial Preventive Force; systematically organized, in which the stationary civil officers and the commanders of the vessels should be furnished with sufficient powers and with well-defined instructions. This would certainly involve a considerable extension of the colonial means now employed, and a corresponding increase of expense ; but I apprehend that the latter would be more than compensated by efficient protection to the colonial fishermen on their own grounds, and by unrestricted liberty of commerce to the traders.

6. I think also that proceedings at law would be more simple, and more readily brought to a termination where the captor was a colonial officer acting under colonial law.

7. The presence of ships of war is necessary so long as ships of war of the United States are stationed off the coasts, and they are always useful as auxiliaries when so employed, but they are not suited for the general requirements of the preventive service which should mainly be carried on by vessels similar in appearance and rig to the fishing vessels.

I have, &c.,

(Signed,) E. G. FANSHAWE,  
Vice-Admiral.

The Secretary of the Admiralty.

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*Report on the Fisheries of Nos. 1 and 2 Stations.—Bay of Fundy.*

(Copy.)

H.M.G.B Britomart, at HALIFAX, N.S.,  
November 18th, 1870.

SIR,—I have the honor to report that I arrived in the Bay of Fundy on July 27th, with orders to relieve H.M.S. *Plover*, and to take charge of Fishing Station No. 1. Before leaving St. John, N.B., on August 1st, I received further orders to relieve the *Cherub*, and take charge of her Station (Fishing Station No. 2) as well.

2.—At that time the only fishing that required looking after was the mackerel fishing in St. Mary's Bay, N.S. The mackerel generally strike up the Bay about the middle of August, but this year they were a fortnight earlier than usual. Vessels from all parts of New Brunswick and Nova Scotia were engaged in the Fishery. At the beginning of August there were a few Americans in the Bay ; they left immediately they received information there was a man-of-war cruising.

The inhabitants on the Nova Scotia coast, from St. Mary's Bay to Cape Sable, I believe, prefer the Americans coming in, as they are in the habit of selling them stores, bait, and ice, and give them every information as to my movements.

The fishermen, very few of whom belong to that coast, disliked the Americans



fishing. With a man-of-war in the Bay of Fundy, occasionally looking into St. Mary's Bay, it is not worth an American vessel's while running the risk of fishing there, St. Mary's Bay being little over six miles broad in any part, which of course greatly increases the danger of being taken. They also, in the months of August and September, have good mackerel fishing on their own coasts off Mount Desert, their principal difficulty being want of bait, which they try to obtain at Grand Manan. The mackerel fishing is all over about the middle of September. The take this season was only fair, the fish not biting well, though they were very plentiful.

3.—The mackerel fishing being over, nearly all the fishing on Station No. 2 is much beyond the three-mile limit, principally on the banks off Cape Sable and Seal Island, for cod and halibut. It is carried on all the winter.

The Americans keep their fish in ice, which they purchase, along with all other stores, at Nova Scotia ports, principally Stoddart Cove (Shag Harbor) and Yarmouth. A preventive force on shore would be much more effectual than a man-of-war for stopping this infringement of the Treaty.

4.—In the months of August and September the principal fishing on Station No. 1 is for herring, on the "Rippling" off Grand Manan, beyond the three-mile limit, the only inshore fishing being carried on by small boats for cod, pollock, and haddock.

5.—Between Campobello and Deer Island the American and New Brunswick boats all fish together, and are perfectly good friends. Small boats also cross over East Point and Lubic to the Northern Head of Grand Manan, and fish along with the Grand Manan boats. There are never more than two or three men in a boat. This would be very difficult to stop entirely, the people on the boundary having the same names, and being so intermarried, and of course the boats carry no papers. A system of numbering all British boats was attempted, but did not succeed, the Americans immediately copying the numbers.

The herring fishing on the *Rippling* was good, the cod and pollock fishing below the average.

6. The strict preservation of the spawning ground at the southern head of Grand Manan is most important; it is well looked after by Mr. McLaughlan, the fishing overseer at the southern head. I called in several times during the close season, from July to 15th October, and never found a vessel fishing. Mr. McLaughlan informed me he had never had so little trouble before to keep the spawning ground clear, and attributed it to the knowledge the Americans had there was a man of war cruising in the bay.

The good effects of this preservation have been most apparent this year. The weir fishing at Grand Manan has been improving for some time, and this season many of the weirs were fishing so well the owners could not get boats or men enough to take nearly all the fish out.

Mr. Ingersoll, who owns the establishment at Long Island, Grand Manan, had filled his smoking houses, containing 6,000 boxes, by the middle of September, and after that time was converting the herring into oil and manure. This, I was informed, was quite a new source of profit at Grand Manan. The herring are crushed to get the oil. The remainder is manure, worth at Boston \$14 a ton, on the spot \$10. On Mr. Ingersoll's premises 27 barrels of oil had been made by two men in the week ending September 24th. It takes two hogsheds of herring to make a barrel of oil. Four barrels of herring going to the hoghead, and 25 boxes to the barrel, and about 5 hogsheds or 500 boxes to a ton of manure.

At Woodward's Cove, also on the eastern side of Grand Manan, 120 barrels of oil had been made that same week. The oil is valuable for leather and machinery, the manure is equal to guano.

At White Head Island, the south-eastern island off Grand Manan, they put up last year 190,000 boxes of herring, and were expecting to exceed that quantity this season. The other establishments were doing equally well.

The weir season commences about the end of August, and continues till the end of December.

I found many of the inhabitants very anxious to have an inspector appointed who could brand the herrings, and whose marks could be known and trusted. They thought that if that were done, Grand Manan herrings would soon fetch as high a price as the celebrated "Digby Chicks," at present they fetch little over half.

7. On the 15th October, the close season being at an end, a large number of vessels collect about Seal Cove for the herring fishing; there were between 40 and 50 schooners there when I left on November 2nd. At that time there were no Americans there, three I heard had been fishing from Three Islands, but left when they found a Man-of-war had arrived. There were many vessels lately turned over from the American flag, and owned at Eastport and Lubec; they mostly said they belonged to Deer Island, and all had registers from St. Andrew's, N.B. I found our own fishermen disliked these vessels very much.

The very few days the weather had been fine enough to set the nets, the fishing had been exceedingly good in Seal Cove and off Three Islands. Three years ago not a herring used to be caught off the latter place.

The fishing continues at the southern head till about Christmas. The herring then, after a short stay at the northern head, strike the coast of New Brunswick between Point Lepreau and l'Etang Harbor, the fishing lasting there till March.

8. I found there was very little fishing on the coast between l'Etang and Lepreau in the Summer and Autumn. At Beaver Harbor, about the largest settlement on that coast, they only put up about 2,000 boxes of herring. Their chief dependence is the winter fishing. They have been in the habit of selling frozen herring to the Americans, who come there in large schooners of 80 or 100 tons to purchase them, paying for them in cash.

Wherever I went I found the people most anxious to know whether the Americans were still going to be allowed to come and purchase the frozen herring, if they were not, they had no other market for them, and the duty was so heavy they could not afford to take them into American ports themselves. At the same time they wished to have the Americans prevented from fishing on their coasts. Mr. Best, the fishery warden at Beaver Harbour, N. B., informed me he often saw 20 or 30 American vessels fishing, but he has no boat at his disposal or any means of preventing it, though he has occasionally been able to seize their nets when set very close to the shore.

#### **SUGGESTIONS FOR THE IMPROVEMENT AND BETTER PROTECTION OF HERRING FISHERIES AT GRAND MANAN.**

9.—In conclusion, I would respectfully suggest, that Mr. McLaughlin should be allowed a boat and crew. At present he is dependent on a volunteer crew and has often difficulty in getting one, especially in rough weather; therefore he cannot always prevent the infringement of the fishery Acts, such as setting nets on Sundays, &c.

I should also suggest; that his authority should be extended to the "Three Islands," to prevent illegal fishing. There is nobody at present in charge there. The Americans knowing this make it a place of resort; I think if these steps were taken, together with the occasional visit of a Man-of-war, the important herring fishery at the southern head of Grand Manan would be effectually protected.

10.—I think it would be more advantageous to Grand Manan, if an Inspector of Fish was appointed to brand the boxes and barrels officially. He also might have charge of the weirs and enforce the local laws. At present many of the weirs are much too close together, especially between Whitehead and Chapre Islands, clearly against sections three and four of the fishery regulations respecting "fishing in the rivers and streams of the County of Charlotte, New Brunswick."

11.—In accordance with Article 5 of the fishery instructions, I beg to enclose the Pilotage Report of the navigating officer.

I have the honor to be, Sir,  
(Signed), BASIL E. COCHRANE,  
Lieutenant and Commander.

Vice-Admiral Edward Fanshawe, Gen. Commander in Chief.



*Annual Report on Fishery Station No. 4.*

Copy.—Fishery Report, No. 10 A.)

H. M. S. *Lapwing*.  
HALIFAX, N. S., 7th, Nov. 1870.

SIR,—In compliance with article 3 of the Fishery Instructions, I have the honor to make the following Report on the state of the Fisheries on No. 4 Station, comprising the west coast of Cape Breton and east coast of Prince Edward Island.

1. *East Coast of Prince Edward Island*.—The fishing on this part of the station did not come much under my notice, as it was confined almost exclusively to East Point, about eight to thirteen miles off shore, which was beyond the limits of my station.

2. *Port Hood*.—The in-shore fishing in the vicinity of this port has, by all accounts, been greatly above the average, the mackerel coming in through the Gut of Canso, about the commencement of June, when there was an immense catch in this harbor. They then went northward towards East Point, and off Sea Wolf Island and Chetican.

The herring fishery here has been excellent. The summer herrings came in in July; the fall herrings for three nights in September; and I believe that as much as 10,000 barrels were caught off Henry Island and outside Smith's Island.

The cod fishery here has not been remarkable. This port seems to be a great harbor of refuge for the American schooners. About fifty of them were frequently at anchor at a time; and previous to the Treaty, large supplies were obtained from the storekeeper's on shore, but owing to the constant presence of a Man-of-war, the traders now derive but little, if any, profit.

The general feeling here is that the abrogation of the license system, and stringent manner in which the laws have been enforced, have had the effect of greatly improving the catch of the in-shore and coast fishermen.

3. *Sea Wolf Island*.—The best fishing ground in this neighborhood is off the east end of the island, and off Broad Cove, where a portion of the American fleet fished for a few days, during the month of September, but this locality is but little frequented.

I may here add that a Company (Grange, Connor & Co.), have an establishment at the island for curing mackerel, on the same principle the salmon are cured during their season in the Margaree River.

The company obtain their fish from the in-shore fishermen.

4. *Chetican*.—The principal fishing ground for mackerel in this neighborhood appears to be off Friar Head, but very few American vessels have been seen here this season, and the catch has been very limited.

There is a large establishment on this island for curing cod fish, (owned by a Jersey company, Philip Robin & Co.), which are very plentiful on the banks off the island.

The mackerel begin here in August, and go north at the end of October.

In spring there are a few herrings here, but no "fall" herrings; the cod is the staple of export.

5. *Gut of Canso*.—This highroad to the fishing grounds seems to have been very much overlooked. There is scarcely ever a Man-of-war there, except when passing through, and the Collectors of Customs find it impossible to enforce their authority, having no force to assist them. The sympathies of the inhabitants are entirely with the Americans, as the schooners are principally manned by men who are natives of the Strait of Canso. The storekeepers and traders derive large profit from their intercourse with the crews.

6. *General Remarks*.—Remarking generally on the means adopted, for the more effectual protection of the fisheries, I would beg to submit that in my opinion, an increased number of Dominion schooners, rigged and equipped in all respects similar to the fishing vessels, and attached as tenders to a stationary Man-of-war, in one of the principal ports in the bay, would be least expensive, and would carry out in a more effectual

manner the ideas of the Government for suppression of the encroachments of the American fishermen.

I consider also that it is most important that all vessels employed in the fishing trade should be compelled not only to show, but to hoist their colors when in the presence of a man-of-war, as great difficulty is experienced among a large fleet in distinguishing American from Colonial vessels.

The bait with which the Americans are supplied is far superior to any which can be procured in this country, to which may be attributed, in a great measure, the success of the Americans previously to the recent restrictions, although even now the local fishermen complain that they have no chance while an American schooner is fishing near them.

In conclusion, I would point out that the Collector of Customs at my headquarters at Port Hood has complained to me that he has no boat or men at his disposal. He is utterly unable to enforce his authority. This would appear to be a matter of great importance to the local interests of the port.

I have, &c.,  
(Signed,) CHARLES G. F. KNOWLES,  
Commander.

Vice Admiral Edward G. Fanshawe,  
Commander-in-Chief.

*Report on Fisheries called for by Act 3 of Fishery Instructions.*

(Copy—Fishery Correspondence No. 4.—Two enclosures.)

H.M.S. *Philomel*,  
HALIFAX, N. S., 28th July, 1870.

SIR,—1. In accordance with Art. 3, Fishery Instructions, I beg to report on the Station, No. 4 and 5. Owing to the short time I was employed on the Fisheries, from June 27th to July 21st, and the fact that the fishing on the station I was employed on does not commence till the end of June, or beginning of July, I have but little to communicate.

2. From the information received at the Magdalen Islands I was given to understand that the herring fishery had been a failure. Owing to the quantity of ice at that place the vessels could not reach them in time, and by the time the vessels had reached there the herrings had gone.

3. The mackerel fishing had commenced off the coast of Prince Edward Island about the 15th July, and schooners were arriving constantly from the Gut of Canso, as we found when off survey or point near East Point.

4. With regard to the best means to be adopted for protection of Fisheries, I would suggest that Cruisers should cruise at night time without lights within three-mile boundary. They would then be able to make seizures of interlopers and foreigners, for nothing but vigorous measures and constant seizures will ever deter Americans from fishing. In the day time a chance of seizure is almost hopeless, as the vessels hover within the boundary with the main sheet aft, head sails down, head to wind, but on a Cruiser being seen they immediately hoist their head sails and get on to a debateable position, but at night time by putting out all lights they might be easily detected fishing and consequently seized; and such a course alone must be adopted to effectually protect the Fisheries. Subjoined is list of vessels boarded, and the navigating officer's report on the pilotage.

I have, &c.,  
(Signed,) DOUGLAS WALKER,  
Commander.

Vice-Admiral George G. Wellesley, C.B.,  
Commander-in-Chief.



*Report on Fishery Station, No. 3, East Coast of Cape Breton.*

(Copy—No. 9.—One enclosure.)

H.M.S. *Royalist*,

HALIFAX, N.S., 1st November, 1870.

SIR,—In compliance with directions contained in Article 3, of my Fishery Instructions, I have the honor to report my experience of the fishery season of 1870, on Station, No. 3., east coast of Cape Breton.

1. The spring mackerel catch was below the average, and bait was very scarce.
2. The autumn mackerel strike was good, and the fish in good condition. Large quantities were caught by small boats close to the shore and in the bays and harbors.
3. The presence of a Man-of-war on the coast has a very wholesome effect in frightening off the Americans, who would otherwise encroach and put into harbor for supplies which they are not permitted to get; but the vessels best suited for capturing the encroachers are the Dominion schooners, which are very similar in appearance to the American fishing vessels, and consequently deceive them as to their character.

4. I would mention that the Collectors of Customs at the places I have been at, informed me that they had no instructions to prevent American fishing vessels from being supplied with ice, bait, &c.; and I heard that vessels ordered out of harbors by me had returned after my departure and taken in the articles which I had forbidden them from receiving.

5. I beg leave to enclose a Report by the Navigating Lieutenant on the Navigation and Pilotage of the Station.

I have, &c.,  
(Signed,)

RICHARD S. BATEMAN,  
Commander.

Vice-Admiral Edward G. Franshawe,  
Commander-in-Chief.

*Report on Fisheries Nos. 2 and 5, for the Season of 1870.*

(Copy.)

H.M. Gunboat *Cherub*, at HALIFAX, N.S.,  
19th November, 1870.

SIR,—I have the honor to submit my report on Fisheries Nos. 2 and 5 for the past season.

During the time I had charge of No. 2 Station the principal fishing was for cod, halibut, and haddock, and generally took place on the ledges outside the three-mile limit.

Very few vessels were employed on the coast until July, when the mackerel appeared in St. Mary's Bay, and a large number of vessels assembled.

Early in April herrings are caught in Annapolis Basin.

Our fishermen complain that the Americans enter the basin and set their nets, there being no Man-of-war at that time of the year to prevent them.

I left the station in the beginning of August, and proceeded to No. 5 Station, under the orders of Commander Poland, of H.M.S. *Plover*.

The fishing on this coast was almost exclusively for mackerel, and was much visited by the Americans.

The fish have been plentiful and large, but the frequent gales have much interfered with the Autumn fishing.

The Canadian Government appears to have adopted the best method of enforcing the laws.

A few schooners, chartered for the season and attached to the ships on the fisheries, would materially assist in their protection.

The Collectors of Customs should be called upon to exert themselves in repressing the

illegal practice of supplying provisions, fishing outfits, bait, &c., to the Americans, and be desired to apply to the Naval Commanders for assistance if required.

I beg respectfully to suggest that a vessel possessing greater steam power than this gunboat be employed on No. 5 Station in the Autumn, as the northerly gales get up very suddenly, with a heavy sea, causing an onshore current (as mentioned in the sailing directions), which renders it necessary to gain an offing on the slightest appearance of bad weather, to avoid getting on a lee shore.

I have, &c., &c.,  
(Signed,) NOEL S. F. DIGBY,  
Lieutenant and Commander.

*Report on the Fisheries.*

(Copy—No. 17.)

H.M.S. *Sphinx*, at HALIFAX,  
15th November, 1870.

SIR,—With reference to Article 3 of the Fishery Instructions, I have to inform you that the most plentiful sorts of fish on the western coast of the Gulf of St. Lawrence are salmon, cod, ling, mackerel, and herring, and the best baits that are used for catching them are small kinds of fish, which are easily obtained by dragging those parts of rivers which become small pools at low water.

Salmon, cod, and ling are found at the mouths of rivers where these baits are, and in about the same proportion of number. Mackerel and herring naturally come into shallow water at certain seasons to spawn, and are there in the best condition for human food; but they can be enticed, and very easily if along a bank, to more than three miles from the coast, and then caught there by a vessel standing out to sea and throwing overboard large quantities of bait as she goes along.

These fish are cured and packed on board the fishing vessels directly they are caught, it being necessary to do so in order to preserve them. As the nearest principal markets for the sale of fish are New York and Boston, and as there is a tax in the United States on fish landed from British vessels, but none from American, and as fish are more plentiful near the coast, it follows that the business on this coast is most profitable when it can be carried on close to the shore, and under American colours. Also, as fishing is apparently most profitable under American colours, and there is an American law which prevents a British built ship from ever being able to sail under American colours, it follows that the ship-builders in the United States have a better market for their fishing schooners than the British. On the other hand, it is a disadvantage to the United States Government for vessels to fish under their flag, for they lose the tax which they would get were the fish to be landed at their seaports from British vessels instead of American.

The residents about the west coast of the Gulf of St. Lawrence have informed me that their in shore fishing this season has been good, and that they attribute this, in a great measure, to the American schooners having been kept off the coast. Large numbers of these schooners have been fishing in the Gulf of St. Lawrence this year, and have been frequently seen doing so within three miles of the coast, notwithstanding the precautions that have been taken to prevent them. These fishing schooners generally go about in fleets, and their crews are made up of all nations, with but a few *bona fide* Americans among them. These men receive no wages but a certain share of the proceeds of the sale of the fish caught during the season. I think that the most effectual plan which could be adopted in the ensuing year for the protection of the Canadian Fisheries would be to put up a telegraph wire along the coast, with a station at every post-office, and to station small steam schooners as follows:—

The one at Shippegan should be of such light draught of water as to be able to pass through Shippegan Gully.

One between Cape Rosier and Cape Despair, head-quarters at Percé.

One between Cape Despair and the River Bonaventure; head-quarters, Port Daniel.

One between Bathurst and Pokemouche Gully; head-quarters, Shippegan.



One between Pokemouche Gully and Richibucto Head ; headquarters off Portage<sup>o</sup> Island.

One between Richibucto Head and Pictou, and north point Prince Edward's Island and Charlottetown ; headquarters, Egmont Bay.

Also a Man-of-war for the whole coast, with headquarters at either Gaspé, Charlotte-town, or Pictou, these being almost the only safe anchorages where a large vessel can lay in bad weather.

The places that I have suggested as headquarters for the small vessels are those to which the American schooners generally go with the plea of seeking for shelter from bad weather, and where bait can be purchased and cargoes transhipped.

Vessels thus stationed could be summoned by telegraph to any part of the coast where foreign vessels might be seen fishing. If a Man-of-war be employed next year for the protection of the Canadian Fisheries, I recommend that it should be commanded by an officer in whose judgment and discretion sufficient confidence can be placed, as neither to be obliged to restrict him to the limited speed of five knots per hour, nor to the limited period of 48 hours at anchor, for these fishing schooners sail very fast, and he would probably find that the only way of detecting them in the act of fishing within three miles of the coast would be by coming up to them about daylight as suddenly and as rapidly as he possibly could.

And if they should see a Man-of-war at anchor at any place they might want to go to, they would easily avoid her by standing out to sea for 48 hours and afterwards returning.

I also think that if a telegraph were put up along the coast, it would be preferable for vessels employed for the protection of the fisheries to remain at anchor as near a telegraph station as possible, ready to start off as fast as possible to any place they might be summoned to, than to cruise about to sea under sail. It would be, in my opinion, of great assistance to the officers in command of vessels employed in the protection of the Fisheries, if they were furnished with the names of all vessels that cleared the Customs of the various ports of the Dominion of Canada, and Prince Edward Island, and if the following laws were to be passed and enforced.

1st. That no vessel should be allowed to leave a British port, without an ensign flying.

2nd. That no person in Canada should be allowed either to sell bait to or in any way to assist to procure it for any person connected with a foreign vessel.

3rd. That all small vessels and fishing-boats, not supposed to carry an ensign, should have, both on their sails and bows a mark that would render the ownership and nationality easily distinguished ; for I think it quite possible that a foreign vessel, after having cleared out for trading purposes, and having attached to her a large number of boats and men, might anchor off the Canadian coast, and, without actually fishing herself, employ her boats and men in doing so, if proper precautions are not taken in time to prevent it.

I also think that it would be an assistance to navigators if, for the future, in placing buoys to mark narrow channels into harbors, black and red buoys were to be placed on the right side going into the harbor, and white and chequered buoys on the left.

I herewith enclose the Navigating Lieutenant's report, in compliance with Article 5 of the Fishery Instructions.

I have, &c.,  
(Signed),

H. B. PHILLIMORE,  
Captain.

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*Report on Fisheries, Fishing Station No. 6.*

(Copy—No. 63.)

H. M. P. Frigate *Valorous*,  
HALIFAX, 17th September, 1870.

SIR,—Agreeably to Article 3 of your Instructions dated 3rd May last, I have the honor to make the following Report :

Owing to the seizure of the schooner *S. G. Marshall*, on the 31st of July, the ship has been much detained at Charlottetown, in prosecuting her to condemnation.

In consequence of the evidence obtained of various vessels in the employ of and belonging to Mr. J. C. Hall, an American citizen, doing business in Charlottetown, being illegally registered and wearing English colors, to enable them to prosecute the in-shore fishery, my attention has been greatly given to the detection of these irregular vessels.

The presence of a ship of war at Charlottetown, I consider, would be of great assistance in exercising supervision and checking these frauds on the statutes.

This port, being on no fishery station, is rarely visited, and, in consequence, the officials to whom it was my duty to apply, were unable, from inexperience, to render me the assistance I required.

In exercising a supervision over the shipping here—which is much wanted, owing to the class of persons who form the Customs authorities, and who here are appointed solely from political reasons—the irregular vessels would in time be suppressed.

It must be remembered that these irregularly owned vessels are fitted out to obtain their cargoes in a short space of time, *e.g.*, the *S. G. Marshall*, had on board two seines, one of 200 fathoms long and 18 feet deep, the other 100 fathoms in length and 12 feet in depth. The cost of the first one was about £400, the smaller one about £200. In addition she had four boats. In evidence the master stated that if he had remained where he was taken, he would have filled his vessel in 48 hours.

With regard to the fishery on No. 6 Station, I have, owing to the limited space of time actively employed, but little to record.

The cod fishery was a good average catch from the Bay of Chaleur along the coast to Peter Point.

The mackerel fishing was hardly an average, if the American fishermen are to be believed.

The English vessels made good catches off Bathurst and other places close to the shore where the fish schooled.

By this I do not mean it to be inferred that the American fishermen do not fish inside the limit and share in all the advantages of the in-shore fishing.

I have seen as many as thirteen vessels at one moment fishing close in-shore, but, of course, the whole were outside the limit before they could be approached.

The inhabitants of Port Daniel complained that prior to this season the Americans were in the habit of hauling their seines in the bay, greatly to the loss and impoverishment of the inhabitants.

The inhabitants of Gaspé Basin and the neighborhood complained of the behaviour of an American, Mr. Ebenezer Marshall, of the schooner *S. G. Marshall*, last year. They stated that he hauled his large seines on Sandy Beach, forming the harbour, and had brought to land, large numbers of young cod-fish which were useless to him.

The spot had always been a favored breeding place for the cod, and they feared that its character would be totally changed, and great loss to them ensue if that practice was pursued.

They also stated that they feared the mackerel would avoid the bay for a season, if the seining was persisted in.

With regard to the best method of protecting the Fisheries, during the ensuing season, I beg to make this suggestion:—

That in the Gulf of St. Lawrence, the Stations 4, 5, and 6, be placed under a senior officer, so that any one of the cruisers under the altered system might be able to refer any question or difficulty to him. The senior officer would then be able to clear up questions and explain matters of a delicate character on the spot. He would also be able to relieve the Cruiser in the event of a capture having been made by her, by receiving the necessary witnesses on board instead of the capturing ship being kept off her station for a length of time.

The fact of being able to communicate on the spot with a superior immediately engaged in the same duty would naturally strengthen the position of those engaged in an



arduous duty of this character for the first time and lessen the isolation now experienced.

In my opinion it requires a personal acquaintance with those engaged in the Fisheries, and also a knowledge of the class of officials met with, to be able to detect the subterfuges to which they have recourse in order to gain their ends.

I observe that I have omitted to mention that the master of the *S. G. Marshall* last year, and complained of to me, is the same Ebenezer Marshall in command of her when captured.

I have, &c.,

(Signed,)

E. HARDINGE,

Captain.

*Final Fishery Report, Station No. 5.*

(Copy—No. 50.)

H.M.S. *Plover*, at CHARLOTTETOWN, P.E.I.,

18th November, 1870.

SIR,—The fishing on this station (No. 5) is almost entirely for mackerel, and is carried on near the shore, on the north and east coasts of this island, according to the direction and strength of the wind, but chiefly between East and Long Points; the fishermen also much frequent the neighbourhood of North Point early in the season. The fishing grounds extend to as much as fifteen miles from the shore at times, especially after blowing weather, and the fish sometimes close in to within a mile when the wind is light.

2. The schooners can only fish when the wind is off shore, in order that they may have room to drift and have smooth water.

3. The American vessels begin to make their appearance the first week in August, and then increase to above 100, about the middle of September, after which they decrease until the middle of October, when they had nearly all left.

The catch this year is reported to have been one of the worst for many years, although a few of the schooners were tolerably successful, but they were the exception.

4. With regard to the encroachments of the United States fishing vessels, it seems to me impossible to prevent it with Her Majesty's cruisers alone, as they being in general the only square-rigged and large vessels on the coast, can be distinguished miles off, and the foreigners have ample warning to get well off shore before the cruiser can approach near to them.

If a schooner, similar to the fishing ones, was attached as tender to each ship, and was to cruise with the fishing fleets, it would, I think, effectually put a stop to illegal fishing; these schooners could be armed with a boat's gun, and manned and provisioned as an ordinary boat from the ship to which they were attached.

5. The Canadian Government might be induced to furnish these vessels, if Her Majesty's Government did not think fit to purchase them; they should be furnished with a few empty fish barrels on deck, and made to look as like an ordinary fishing vessel as possible.

6. Every facility is given in the ports of this island to foreigners for obtaining and replenishing their stock of stores and necessaries for fishing. This, if the treaty is intended to be strictly enforced, should not be allowed, as if it is wished to drive the United States fishermen from these waters, they will then be obliged to return home for supplies. Cod fishing is carried on to a slight extent, but only in deep water, and entirely by English vessels.

7. I made one capture during the season, the *Clara F. Friend*, of Gloucester, Mass. I took her within a mile of the shore, where she was fishing with two or three other Americans, in the midst of a large fleet of schooners.

8. The *Cherub* gunboat was placed for some time under my orders on this station, and was principally employed about Cascumpeque and North Point.

I beg to bring to your notice the ready and efficient manner in which Lieutenant Digby invariably carried out my orders.

The United States men-of-war, *Frolic*, *Neipsie*, and *Guard*, were employed on this station during the season, and I have much pleasure in stating that a mutual very good feeling was established between us, and their presence tended very much to check irregularities on the part of their fishermen.

There was little or no fishing on Station No. 4, whilst under my charge.

10. I beg leave to suggest that copies of these reports should be furnished to Commanders, on taking charge of their stations, in order that they may have the advantage of their predecessor's experience.

11. I do not agree with Captain Walker's suggestion of night cruising without "lights," as the fish do not bite beyond an hour after sunset, and the fishermen nearly always anchor at night, besides, there would be a considerable bill for damages, should a vessel be run down, the cruiser having no lights up.

I have, &c.,

(Signed,)

JAMES A. POLAND,

Commander.

Vice-Admiral Edward G. Fanshawe,

Commander-in-Chief.

P.S.—I beg to enclose a list of vessels boarded.

*Extract from a Despatch from the Secretary of State for the Colonies, dated,*

(Copy.)

DOWNING STREET, 16th January, 1871.

\*—Reports of the Naval Officers in command of Her Majesty's ships engaged in this service during the past season.

I understand that the Vice-Admiral has forwarded to you copies of these documents, and I should be glad to be made acquainted with the views of your responsible Advisers upon the points raised in the papers, so far as they relate to the exclusion of United States fishing vessels from Canadian waters.

The Committee of the Privy Council have had under their consideration Vice-Admiral Fanshawe's Despatch to Your Excellency, dated 15th December, 1870, transmitting His Excellency's General Report on the protection of the Canadian Fisheries for the year 1870, together with the reports of the Naval Officers on the same subject. They have likewise had under consideration the Earl of Kimberley's Despatch of 22nd December, 1870, transmitting the copy of a Despatch from the Lieut.-Governor of Prince Edward Island, on the subject of the claim on the part of the Government of the United States, that their fishing vessels should be allowed to trade in British ports. Although the Committee of the Privy Council have communicated to Her Majesty's Government, very recently, their deliberate opinion on the various questions at issue between Great Britain and the United States, relating to the construction of the Treaty of 1818, they deem it only proper to call attention to the very interesting reports from the Naval Officers, and to notice the views expressed by the Government of the Island of Prince Edward. Her Majesty's Government are already aware that the Government of Canada dissents from the opinion that the trading in British ports is not "a substantial invasion of British rights." This particular question seems to be the one on which the Government of Prince Edward Island differs with the Canadian Government on the policy that ought to be pursued, and it therefore seems to the Committee of the Privy Council desirable to refer to the reports of the Naval Officers in order to establish the necessity of the greatest possible stringency in checking the trespasses of the American fishermen. In paragraph 4 of Vice-Admiral Fanshawe's Despatch to the Secretary of the Admiralty, dated 22nd November, 1870, he observes:—"It must be evident that the number of the United States fishermen is too large, and their determination to trespass upon Colonial coast fisheries



"too general to admit of the law being maintained without the adoption of vigorous repressive measures." In the report of Lieut. Cochrane, dated 18th November, 1870, he says :—"At the beginning of August there were a few Americans in the bay, they left immediately they received information there was a Man-of-war cruising." Again, "Mr. Best, the fishery warden at Beaver Harbor, N. B., informed me he often saw 20 or 30 American vessels fishing." Commander Knowles, in a despatch, dated 7th November, 1870, states, with reference to Port Hood :—"This port seems to be a great harbor of refuge for the American schooners : about 50 of them were frequently at anchor at a time, and previous to the treaty large supplies were obtained from the storekeepers on shore, but owing to the constant presence of a Man-of-war the traders now derive little if any profit. The general feeling here is that the abrogation of the license system, and stringent manner in which the laws have been enforced, have had the effect of greatly improving the catch of the in-shore and coast fishermen." Commander Bateman, in his report, dated 1st November, 1870, states :—"The presence of a Man-of-war on the coast has a very wholesome effect in frightening off the Americans, who would otherwise encroach, and put into harbor for supplies, which they are not permitted to get." Lieut. Digby, in his report, dated 19th November, 1870, observes :—"The Collectors of Customs should be called upon to exert themselves in repressing the illegal practice of supplying provisions, fishing outfits, bait, &c., to the Americans, and be desired to apply to the Naval Commanders for assistance if required. Captain Phillimore states :—"The residents about the west coast of the Gulf of St. Lawrence have informed me that their in-shore fishing, this season had been good, and that they attribute this, in a great measure, to the American schooners having been kept off the coast. Large numbers of these schooners have been fishing in the Gulf of St. Lawrence this year, and have been frequently seen doing so within three miles of the coast, notwithstanding the precautions that have been taken to prevent them." One of Captain Phillimore's suggestions is "that no person in Canada should be allowed, either to sell bait to, or in any way to assist to procure it for any person connected with a foreign vessel." Captain Harding, in his Despatch, dated 17th September, 1870, gives most important testimony, with regard to the encouragement given at Charlottetown, Prince Edward Island, to the American trespassers. He states "In consequence of the evidence obtained of various vessels in the employ of or belonging to Mr. J. C. Hall, an American citizen, doing business in Charlottetown, being illegally registered, and wearing English colors to enable them to prosecute the in-shore fishing, my attention has been greatly given to the detection of these irregular vessels." Again "I have seen as many as thirteen vessels at one moment, fishing close in-shore, but, of course, the whole were outside the limits before they could be approached." Commander Poland, in his report, dated 18th November, 1870, states :—"Every facility is given in the ports of this Island (Prince Edward) to foreigners for obtaining and replenishing their stock of stores and necessaries for fishing. This, if the Treaty is intended to be strictly enforced, should not be allowed, as if it is intended to drive the United States fishermen from these waters, they will then be obliged to return home for supplies." The evidence of all the Naval Officers engaged in the protection of the British Fisheries establishes the fact that there is a systematic trespassing in the British fishing grounds by American fishermen, and that any facilities afforded to the trespassers for obtaining bait, or other supplies, must tend to encourage illegal traffic.

The Committee of the Privy Council entertain a very strong opinion as to the importance to Great Britain of the British North American Fisheries as a nursery for seamen ; but they likewise claim for the Canadian people the rights secured to them by the Treaty of 1818. They have ever been willing to discuss the stipulations of that Treaty in the most liberal spirit, and have even made temporary concessions on points not open to doubt, from a desire to meet the conciliatory policy of Her Majesty's Government, but they cannot acquiesce in any abrogation of the rights secured to Her Majesty's subjects by that Treaty. It appears from the correspondence before them, that the Government of Prince Edward Island, while admitting the correctness of the Canadian interpretation of

the Treaty, is disposed to make concessions, with the avowed object of fostering a trade with the American trespassers, which is advantageous to individuals who have no interest in the Fisheries. Her Majesty's Government may not be aware that the inhabitants of Prince Edward Island have engaged in the Fisheries to a very limited extent, and that Charlottetown has been the headquarters of the American trespassers. The Committee of the Privy Council readily acknowledge that there are persons in Canada who would be very desirous that an illegal traffic, by which they would derive profit, should be encouraged. There have always been persons interested in smuggling and in poaching, who although not immediately engaged in such pursuits, have nevertheless profited by them, and have indirectly encouraged them. The Committee of the Privy Council have only, in conclusion, to express their firm conviction that Her Majesty's Government will adhere to the stipulations of the Treaty of 1818, which, in their judgment, cannot be abrogated without the consent of Canada. It appears to the Committee of the Privy Council that if the Government of the United States should make any complaint of the stringency of the regulations for the protection of the British Fisheries, Her Majesty's Government will be enabled to state in reply that they have learned from the reports of the Naval Officers on the North American station, that there has been systematic trespassing by American fishing vessels in the waters in which they expressly renounced all right of fishing by the Treaty of 1818; and that Her Majesty's subjects in British America have good reason to claim a strict adherence to Treaty rights, when the abandonment of such rights would obviously encourage the illicit trade which is openly carried on.

The Committee of the Privy Council had prepared the foregoing Report before Your Excellency communicated to them the Secretary of State's desire, expressed in his Despatch of the 16th January, to be made acquainted with the views of Your Excellency's responsible Advisers in the reports of the Naval Officers. They hope that this Report will supply the information required by the Secretary of State.

Privy Council Chambers,

17th February, 1871.

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